IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF THE STATE OF OKLAHOMA

WILLIAM MICHAEL AVERITT, Plaintiff,	)	
VS.	)	NO. 80-C-147-C
SHERATON INN-SKYLINE EAST HOTEL and SHERATON INNS, INC., a Delaware Corporation, Defendants.	)	

FILED

OCT 31 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

The above entitled action came on regularly for trial before the Court and a jury, the Honorable H. Dale Cook, District Judge, presiding, the plaintiff appearing in person and by his attorneys, Don L. Dees and Lawrence R. Maxwell, Jr., and the defendants appearing by their duly designated representatives and by their attorney, Alfred B. Knight, and the issues having been tried and the jury having returned its verdict, which was accepted by the Court;

IT IS THEREFORE ORDERED AND ADJUDGED that William Michael Averitt, plaintiff, have and recover from the Southland Motor Inns Corporation of Oklahoma d/b/a Sheraton Inn-Skyline East Hotel, defendant, and Sheraton Inns, Inc., defendant, the sum of $375,000.00 as compensatory damages and $500,000.00 as punitive damages with pre-judgment interest at the rate of 10% from March 24, 1980, to October 30, 1980, or $22,602.74, together with costs incurred.

Dated this 31st day of October, 1980.

APPROVED AS TO FORM:

DON L. DEES, Attorney for the Plaintiff

ALFRED B. KNIGHT, Attorney for Defendant

(Signed) H. Dale Cook

H. DALE COOK, United States District Judge

FILED

OCT 31 1980

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SARAH HIGEONS,

Plaintiff,

vs.

No. 77-C-398-Bt

BILL PARESE, WARREN McNEIL, LESTER SCARBROUGH, WAYNE ROBERTS, RAY GRIMES, and THE CITY OF OWASSO, OKLAHOMA,

Defendants.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiff, Sarah Higeons, and the defendants, Bill Parese, Warren McNeil, Lester Scarbrough, Wayne Roberts, Ray Grimes and the City of Owasso, Oklahoma, advise the court of a settlement agreement between the parties and pursuant to Rule 41(a)(1)(ii), F.R.C.P., jointly stipulate that the plaintiff's action be dismissed with prejudice.

Dated this 31st day of October, 1980.

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Attorneys for Plaintiff, Sarah Higeons

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Attorney for Defendant,
Warren McNeil

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WALTER M. BOOKER, Plaintiff,	)	
vs.	)	No. 80-C-453-E
GEORGE W. UNDERWOOD, Defendant.	)	

STIPULATION of DISMISSAL WITH PREJUDICE

It is hereby stipulated between James O. Goodwin, Counsel for Plaintiff, and Ken Ray Underwood, Counsel for Defendant, that the above styled cause be and is hereby dismissed with prejudice, the parties hereto having entered into an agreed settlement and the same being dispositive from all issues raised.

JAMES O. GOODWIN
Counsel for Plaintiff

KEN RAY UNDERWOOD
Counsel for Defendant

WALTER M. BOOKER
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAY MARSHALL, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY and DAN ALLEN,

Defendants.

No. 80-C-538-E

O R D E R

The Court has before it the evidence submitted by the Defendants at a hearing held on October 16, 1980 in response to a Show Cause Order issued by this Court on September 19, 1980.

The Court upon consideration of the evidence presented, the briefs of the parties and the pleadings contained in the file enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.

2. That administrative probable cause existed for the issuance of the Magistrate's Inspection Warrant.

3. That the Defendants, GRDA and Dan Allen, refused to allow inspection pursuant to the Inspection Warrant issued by the Magistrate.

4. The Defendants have established no reason why they should not be held in civil contempt of this Court.

CONCLUSIONS OF LAW

1. Defendants are adjudged in civil contempt of this Court.

2. Plaintiff is entitled to the reasonable expense incurred by it in attempting the frustrated inspection.

Upon the grounds and for the reasons set forth in the Findings of Fact and Conclusions of Law, the Defendants are ordered to allow Plaintiff to enter upon the premises described as the Grand River Dam Authority Power Plant Construction Site at reasonable

times during ordinary business hours and to inspect in a reasonable manner pursuant to the Magistrate's Inspection Warrant. Such inspection to be performed within fifteen (15) days of the date of this Order.

ORDERED that such inspection, together with payment of a fine by the Defendants in the amount of $200.00 will purge the contempt.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DOROTHY NELL HUNT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 80-C-361-E
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

O R D E R

The Court has before it for consideration Petitioner's Application for Writ of Habeas Corpus.

The Petitioner was originally sentenced on April 2, 1976, to three years imprisonment and a fine of $15,000.00 on a charge of "unlawful sale of movie showing acts of sexual intercourse or unnatural copulation," pursuant to 21 O.S. § 1040.51. All post trial motions have been overruled. The Petitioner appealed to the Court of Criminal Appeals for the State of Oklahoma. That court denied oral argument and denied the appeal on October 10, 1979. However the court did modify the sentence to be one year imprisonment and $5,000.00. A petition for rehearing was filed on October 22, 1979 and an order was entered denying rehearing on November 13, 1979. On February 11, 1980 the Petition for Certiorari to the United States Supreme Court was docketed. On May 27, 1980, the United States Supreme Court denied certiorari but noted that Justice Brennan, Justice Stewart and Justice Marshall would grant certiorari and reverse the conviction. On June 23, 1980, the Court of Criminal Appeals reissued its mandate and formal sentencing was held on that day. The trial judge heard four hours of testimony, then denied Petitioner's Application for Post-Conviction Probation and incarcerated Petitioner in the state penitentiary in Oklahoma.

The Court now has before it Petitioner's Application for Writ of Habeas Corpus alleging:

a. The statute under which the prosecution was maintained was unconstitutionally vague, overbroad and unconstitu-

tional on its face in violation of both the State and Federal constitutions;

b. In the event the statute is held to be constitutional, that it is unconstitutionally applied in that the trial court failed to give an instruction on scienter, as mandated by the Supreme Court of the United States and the Court of Criminal Appeals for the State of Oklahoma;

c. That the prosecution was filed under the wrong statute and given unlimited and unbridled discretion to the District Attorney's office as to whether or not to file a misdemeanor or a felony; and

d. That the modification of the sentence by the Court of Criminal Appeals is unconstitutional as it violates equal process and equal protection.

The Petitioner states that she has raised all of the above issues on the request for certiorari and that she has exhausted all state court remedies. The state has responded and the Petitioner has filed a reply brief.

It appears from the file that Petitioner has exhausted her state court remedies. The Court has reviewed the entire file, including the transcripts of the state court proceedings, and concludes that this matter is now in a proper posture for dispositive ruling.

In Townsend v. Sain, 372 U.S. 293 (1963), the Supreme Court laid down the test applicable to a determination of whether the petitioner was entitled to an evidentiary hearing. See 28 U.S.C. § 2254(d); Rule 8, Rules Governing § 2254 cases. In reviewing the record, under the test of Townsend, the Court finds that an evidentiary hearing is not necessary.

I.

WHETHER THE OKLAHOMA STATUTE WHICH REGULATES OBSCENE FILMS (21 O.S. § 1040.51) IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD?

The Petitioner argues that it is unconstitutional; that it is void for vagueness because men of common intelligence must

guess its meaning. The Petitioner additionally argues that the parties sought to be held criminally accountable do not have knowledge of the fact and character of the obscenity of the material charged. The Petitioner states that the Defendant, according to the Oklahoma statute, must place himself in jeopardy of suffering criminal sanctions before he can determine whether or not specific conduct falls within the confines of the law. Therefore the statute as written is ex post facto in its application and is unconstitutionally vague and overbroad in that it does not sufficiently apprise the individual as to what activity constitutes a crime against the state until and after that particular individual becomes a defendant in criminal proceedings.

The state responded to this issue arguing that the statute is specific and that the jury was properly instructed with definitions of obscenity.

A statute which, without requiring scienter, makes it a criminal offense to possess or distribute obscene materials, is invalid as a matter of constitutional law. However, the courts have upheld criminal anti-obscenity legislation which, although not specifically requiring scienter, was construed by the courts to require scienter as an element of the offense. 5 A.L.R.3rd 1222 § 3[3]. The Court in 1947 held in Roth v. U.S., 354 U.S. 476, that all that is required by the constitution is that the language convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices; and that the terms "obscene" and "indecent", applied according to the proper standard for judging obscenity, give adequate warning of the conduct proscribed and mark boundaries which are sufficiently distinct for judges and juries to fairly administer the law. See also 5 A.L.R.3rd at p. 1220.

The Supreme Court abandoned the Roth test and approved instead the guidelines of Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607. Miller gives a two part test: (1) That the regulation must be limited to specifically defined

sexual conduct and (2) That the three part standard must be applied. The three part standard is that the material appeals to the prurient interest, that it portrays sexual conduct in a patently offensive way and, which taken as a whole has no artistic value. The Oklahoma Court has recognized the statute could not stand in itself prior to incorporating standards of Miller, by its decisions in McCrary v. State of Oklahoma, 507 P.2d 924 (1973) and Cherokee News v. State of Oklahoma, 533 P.2d 624, after remand from the United States Supreme Court. The statute however was saved by overlaying the elements set forth in Miller, supra. The holding in McCrary, supra, concerning state wide standards, however, was overruled by the Court of Criminal Appeals.

In United Artists v. Harris, 363 F.Supp. 857 (W.D. Okla. 1974), a three judge court abstained from determining the constitutionality of 21 O.S. § 1040.51 until the Oklahoma courts construed the law in light of the Miller standard. Oklahoma's Court of Criminal Appeals responded by incorporating the Miller criteria for obscenity into its statute. State v. Combs, 536 P.2d 1301 (1975). The statute in addition compares favorably with other statutes that have been upheld by the United States Supreme Court. Ward v. Illinois, 431 U.S. 767 (1977); Spawn v. Calif., 431 U.S. 595 (1977). The Federal obscenity statutes have been upheld where the Miller standards were applied. Hamling v. U.S., 418 U.S. 87 (1974); Smith v. U.S., 431 U.S. 291 (1977); U.S. v. Thomas, 613 F.2d 787 (Tenth Cir. 1980); Pinkos v. U.S., 436 U.S. 293 (1978); Amato v. Divine, 558 F.2d 364 (1977); P.A.B. Inc. v. Stack, 440 F.Supp. 937 (S.D. Fla. 1977).

In Hanf v. State of Oklahoma, 560 P.2d 207 (Okl. Cr. 1977) the Court examined 21 O.S. § 1040.51. It cited Miller v. Calif., supra, and quoted that case as follows: "A state may regulate works which depict or describe sexual conduct so long as the statutes are carefully drawn, either by wording of the statutes or their application." The court additionally noted that the Oklahoma Obscenity statute was found to be constitutional by incorporating the guidelines of Miller in State v. Combs, supra.

In the Court of Criminal Appeals action regarding this Petitioner, Hunt v. State, 601 P.2d 464 (1979), the court restated its view that 21 O.S. § 1040.51 is not unconstitutionally vague or overbroad because the statute could be saved by construing it as implicitly incorporating the standards announced in Miller v. Calif., supra.

The Court, after carefully reviewing the arguments of counsel and the appropriate authorities finds that in light of the Miller language, 21 O.S. § 1040.51 can be authoritively construed to include the Miller requirements. Therefore the statute is not unconstitutionally vague and overbroad. The Oklahoma statute on obscenity on its face is therefore held to be constitutional. The statute has been construed to give fair notice as to what is constitutionally prohibited.

II.

WHETHER THE PROVISION OF 22 O.S. § 1066 ALLOWING THE COURT TO MODIFY A DEFENDANT'S SENTENCE IS VIOLATIVE OF THE CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION?

The Petitioner contends that the statute is violative of due process because such power to modify deprives the Petitioner of a trial of the facts by a fair and impartial jury and subjects any decision by a jury to modification by the Court of Criminal Appeals. Petitioner alleges there were numerous failures at the trial court, especially the failure to give proper instructions and that the court cannot mitigate the damage by reducing the sentence.

The government responded by stating that the Oklahoma Statute on Modification allows the court to reduce sentences in cases where the guilt is clear but a trial error occurred which affected the punishment set by the jury. The government argues this does not violate the fact finding function of the jury.

The jury is the sentencing authority and the trial courts should not modify the punishment since that authority is vested with the Court of Criminal Appeals. 22 O.S. § 926; Luker v. State, 552 P.2d 715 (Okl. Cr. 1976). The Court's finding that

there was "no doubt" as to the Petitioner's guilt is consistent with the harmless error rule approved by the Supreme Court. Schneble v. Florida, 405 U.S. 427, 31 L.Ed.2d 340, 92 S.Ct. 1056 (1972). Oklahoma has incorporated the harmless error rule into its decisions. Frazier v. State, 607 P.2d 709 (1980).

When the review of the entire record reveals numerous irregularities that tend to prejudice rights of the Defendant to a fair trial, the case will be reversed, even though one of the errors standing alone would not be ample to justify reversal. Brooks v. State, 533 P.2d 639 (Okl. Cr. 1975); Lovall v. State, 455 P.2d 735 (Okl. Cr. 1969). The reviewing Court, upon consideration of the entire record and all of the circumstances, may reduce the sentence where the record indicates that substantial justice would be served by so doing. Avants v. State, 432 P.2d 932 (Okl. Cr. 1967). The Court of Criminal Appeals has the authority to modify a sentence if it can conscientiously say that under the facts and the circumstances the sentence is so excessive that it shocks the conscience of the court. Bowen v. State, 586 P.2d 67 (Okl. Cr. 1978); Wade v. State, 581 P.2d 914 (Okl. Cr. 1978). The reviewing court has the power to modify the sentence where justice so requires. Ross v. State, 572 P.2d 1001 (Okl. Cr. 1977).

In the case at hand, the Petitioner appealed her conviction to the Oklahoma Court of Criminal Appeals. Her original sentence of March 3, 1976, was for a term of three (3) years imprisonment and a fine of $15,000.00. The Court of Criminal Appeals modified the sentence to one (1) year imprisonment and a fine of $5,000.00. After reviewing the files, briefs and applicable authorities, this Court holds that the provision of 22 O.S. § 1066 allowing the court to modify a sentence is not violative of the constitutional rights of a Defendant. Safeguards are included within the interpretation of a statute and in this case especially, the Petitioner benefited from the modification. The Court of Criminal Appeals after considering the circumstances of this case, modified the sentence to insure that the ends of justice were met. Therefore, it is the order of this Court that Peti-

tioner's proposition number II. is hereby denied.

III.

WHETHER GIVING THE PROSECUTION DISCRETION IN CHOOSING WHETHER TO CHARGE A DEFENDANT WITH A FELONY OR A MISDEMEANOR FOR THE SAME ACT COMMITTED UNDER THE SAME CIRCUMSTANCES BY PERSONS IN LIKE SITUATIONS IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION?

The Petitioner cites Justice Brett's dissent wherein he stated that the misdemeanor statute (22 O.S. § 1040.8) repealed by implication the felony statute (21 O.S. § 1040.51) under which the Defendant was convicted. The Petitioner argues that the misdemeanor statute covers everything and more than the felony statute.

The government's response is that the Petitioner's contention has been rejected in U.S. v. Batchelder, 442 U.S. 114, 60 L.Ed.2d 755, 99 S.Ct. 2198 (1979).

The government is correct in citing U.S. v. Batchelder, supra, and in addition the Oklahoma Court of Criminal Appeals held similarly in McCrary v. State, 507 P.2d 927 (Okl. Cr. 1973), remanded, 414 U.S. 966; aff'd 533 P.2d 629 (Okl. Cr. 1974).

In construing penal statutes, it is the general rule that later enactments repeal former ones practically covering the same acts but fixing a lesser penalty. U.S. v. Radetsky, 535 F.2d 556 (Tenth Cir. 1976); U.S. v. Yuginovitch, 256 U.S. 450, 41 S.Ct. 551, 65 L.Ed. 1043 (1921). Courts should look to whether there was the intent present to make the latter act a substitute for any part of the earlier statute. U.S. v. Radetsky, supra; U.S. v. Gilliland, 312 U.S. 86 (1941); Posadas v. National City Bank, 296 U.S. 997, 56 S.Ct. 349, 80 L.Ed. 351. Courts should also study whether there has been a direct rejection of the prior statute. Friends of the Earth v. Armstrong, 485 F.2d 1, (Tenth Cir. en banc), cert. denied, 414 U.S. 1171, 94 S.Ct. 933, 39 L.Ed.2d 120 (1974).

The Petitioner has not met the heavy burden of proving an implied repeal as that burden has been recently set forth in U.S. v. Brien, 617 F.2d 299 (First Cir. 1980). Based upon the

authorities cited it is the view of this Court that the prosecutional discretion in charging Petitioner with a felony rather than a misdemeanor in this instance does not rise to the violation of the equal protection clause of the constitution.

IV.

WHETHER THE FAILURE TO GIVE AN INSTRUCTION ON SCIENTER CONSTITUTED REVERSIBLE ERROR OR HARMLESS ERROR

Petitioner states that the Court of Criminal Appeals admitted that error had occurred at trial when the court failed to give a scienter instruction. However, the court ruled that it was harmless error. Petitioner refutes the court's statement that no contrary result would have been reached regardless of the instruction, by stating the Court of Appeals cannot invade the province of the jury. Petitioner alleges that the accused has the right to have the verdict based upon the proper instructions and that the accused was denied the right to a fair trial because the instructions were incorrect.

The state responded by stating the Petitioner's proposed instructions concerning scienter requested the court to instruct the jury that the Petitioner "knew the publications were obscene". The state argues that Oklahoma law does not require this and that the state court was correct in refusing to give such instruction. The government argues in addition that there was never any serious contention at trial that the Petitioner did not know what she was selling.

In Hanf v. State, 560 P.2d 207 (Okl. Cr. 1977) the court stated:

> "In all future prosecutions under any obscenity statute the trial court must give, in addition to general instructions ... a scienter instruction that informs the jury ... that defendant knew the contents of the material in question."

and further that court explicitly gave the following proposed instruction:

> "You are instructed that the words 'knowingly' and/or 'willfully' ... require that the defendant knew the contents of the material."

The Court does not feel that justice would be served by allowing the error to be labeled "harmless" because this Petitioner's trial took place before the Hanf, supra, case was decided wherein the trial court gave the model instruction.

This Court does agree with the Court of Criminal Appeals statement, that the argument of the state, wherein the state says that the instruction "any person knowingly buying, selling, etc." is an instruction on scienter, is absurd. This Court believes that in this case the court could not speculate as to what the jury would have decided if properly instructed on the scienter requirement.

In Smith v. Calif., supra, the Supreme Court reversed the conviction of a defendant convicted under the California statute which included no element of scienter. In Hanf v. State, supra, the Court states that scienter is a necessary element of an obscenity statute citing Smith v.Calif. That court states that scienter is incorporated into § 1040.51 in its "knowingly" requirement and the "willfully" requirement of § 1021.

However, the instructions in this case did not properly convey to the trier of fact the concept of scienter. The case presented to the jury did not include the element of scienter thereby imposing the strict liability element upon the Defendant, which Smith v. Calif. held to be unconstitutional. An incorrect instruction which does not contain a scienter requirement in an obscenity case such as this is not merely harmless error, but rather is an error reaching constitutional dimensions. The statutory construction imposed on § 1040.51 must be given the constitutional application articulated by the United States Supreme Court in Miller v. California, supra, and Smith v. Calif., supra.

This Court has carefully reviewed the instructions and feels that the instruction as given was deficient and more than harmless error. The statute itself is constitutional but only when applying standards and safeguards as enumerated by the United States Supreme Court in the cases cited in this order.

This Court is of the opinion, however, that the statute was unconstitutionally applied to this Defendant in this particular case because the element of scienter was missing from the instructions submitted to the jury. "Scienter, a specific awareness of the contents which make the publication obscene, is a necessary element of an obscenity statute ...", Hanf v. State, supra; see Smith v. Calif., 361 U.S. 147, 80 S.Ct. 215 (1959). Therefore, in order to save the statute, the safeguards must be applied to it. If the Court had instructed the jury on the element of scienter, then this Court would reach a different result. In U.S. v. Mel Friedman, 528 F.2d 784 (Tenth Cir. 1976), the court held that the court should accurately convey the guidelines expressed in Miller, supra, in delivering instructions. In this case, scienter was not instructed upon, therefore there was an unconstitutional application of the statute.

In Gillihan v. Rodriquez, 551 F.2d 1182 (Tenth Cir.), cert. denied, 434 U.S. 845 (1977), the court said:

> Habeas corpus is not available to set aside a conviction on the basis of erroneous jury instructions unless the error has such an effect upon the trial as to render it so fundamentally unfair that it constitutes the denial of a fair trial in the constitutional sense.

551 F.2d at 1192, quoting Linebarger v. Oklahoma, 404 F.2d 1092 at 1095 (Tenth Cir. 1968), cert. denied, 394 U.S. 938 (1969). However, in this case for the reasons set forth previously in the order, the error was so fundamentally unfair that it constituted a "denial of a fair trial in the constitutional sense."

Upon this Court's review of the record and relevant authorities, the Court concludes that the application of the statute to the case of Petitioner Hunt was unconstitutional and violated Petitioner's rights.

IT IS THEREFORE ORDERED that the Writ of Habeas Corpus sought by Petitioner shall issue and she shall be released from state custody unless she is afforded a new trial within ninety (90) days of this date.

It is so Ordered this 30th day of October, 1980.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES LEE BELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 80-C-388-E
	)	
PATRICIA ROBERTS HARRIS,	)	
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES OF THE UNITED STATES,	)	
	)	
Defendant.	)	

O R D E R

The Court has for consideration the Motion to Remand filed by the Defendant, the Brief in Support thereof, and, being fully advised in the premises, finds:

Section 205(g) of the Social Security Act, as amended, 42 U.S.C. 405(g) provides:

> * * * The Court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary * * *.

IT IT THEREFORE ORDERED that the Motion to Remand of the Defendant be and the same is hereby sustained and this cause of action and complaint are hereby remanded to the Secretary of Health and Human Services of the United States for further action.

ENTERED this 29th day of October, 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
LARRY R. CLAYTON, Defendant.	)	CIVIL ACTION NO. 80-C-517-E

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 30th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SUN PIPE LINE COMPANY, a Pennsylvania corporation, Plaintiff,	)	
vs.	)	No. 80-C-595-E
UNI OIL, INC., a Texas corporation, Defendant.	)	

FILED

OCT 30 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Notice of
DISMISSAL

Plaintiff SUN PIPE LINE COMPANY, pursuant to F.R.Civ. P.41(a), hereby dismisses its Complaint against Defendant UNI OIL, INC. herein with prejudice, this matter having been settled and compromised by the parties.

James L. Kincaid
J. David Jorgenson

2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
SUN PIPE LINE COMPANY

OF COUNSEL:

CONNER, WINTERS, BALLAINE,
BARRY & McGOWEN
2400 First National Tower
Tulsa, Oklahoma 74103

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 1980, I mailed a true and correct copy of the above and foregoing Dismissal to Thomas J. Hajecate, President, Uni Oil, Inc., 6330 Gulfton, Houston, Texas 77081, with proper postage affixed thereon.

J. David Jorgenson

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

LEWIS A. ELLIOTT, JR.,
Defendant.

CIVIL ACTION NO. 80-C-193-B

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 30th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
DONALD D. PHELPS, JR., Defendant.	)	CIVIL ACTION NO. 80-C-194-B

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 30th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JANDEBEUR'S MOTOR COMPANY, INC., an Oklahoma corporation,

Plaintiff,

vs.

AMERICAN HONDA MOTOR COMPANY, INC., and VIRGIL FIELDS,

Defendants.

No. 78-C-168-E

O R D E R

Defendant American Honda moves for a judgment notwithstanding the verdict as to legal issues, namely whether an agreement was formed, whether there was any damage to Plaintiff, and if so, the amount of damages.

The standard for granting a judgment notwithstanding the verdict is precisely the same as the standard for directing a verdict. See Wright & Miller: Civil § 2537; Rule 50 F.R.C.P. The Court may preempt the jury's verdict only when it would have no foundation in fact and the Court in the exercise of its judicial discretion would be required to set it aside. U.S. v. Hess, 341 F.2d 444 (Tenth Cir. 1965). In considering a motion for directed verdict, the trial court must view the evidence in the light most favorable to the party opposing the motion and if the evidence taken in that light is such that the trial court would be required to set aside a verdict for the opposing party, a motion for a directed verdict should be granted. Toland v. Technicolor, Inc., 467 F.2d 1045 (Tenth Cir. 1972). A verdict may be directed or a jury verdict overturned only if facts and inferences point so strongly and overwhelmingly in favor of one party that reasonable men could not arrive at a contrary verdict. Pearce v. Wichita County, 590 F.2d 128 (C.S. Tex. 1979).

The Defendant argues that there was no proof of Defendant Fields' authority to enter into the contract alleged. The evidence

supported the fact that Defendant Fields had at least apparent authority to bind American Honda to the agreement. The jury obviously determined that Fields had authority to bind the Defendant. This finding has an evidentiary and factual basis and is clearly sufficient to withstand the Defendant's motion for judgment NOV.

When applying the standard to govern the motion for judgment NOV and viewing the evidence in the light most favorable to the Plaintiff, then the argument of the Defendant's that no agreement was formed cannot be sustained.

Defendant in addition moves for a judgment NOV on the issue of damages. Defendant argues that Defendant's damage proofs are speculative. However, after hearing the evidence, the Plaintiff's proof as to the amount of damages and whether there were indeed damages is not speculative. There is even proof in the record that the damages sustained by the Plaintiff were in excess of the damages awarded by the jury.

Using the standard for a judgment NOV and after reviewing the record the Court holds that the motion should be overruled.

IT IS THEREFORE ORDERED That Defendant's Judgment NOV shall be and the same is hereby overruled.

It is so Ordered this 29th day of October, 1980.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JANDEBEUR'S MOTOR COMPANY, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	No. 78-C-168-E
AMERICAN HONDA MOTOR COMPANY, INC., and VIRGIL FIELDS,	)	
Defendants.	)	

ORDER AND JUDGMENT FIXING ATTORNEYS' FEES

This matter is before the Court for consideration upon the application of Plaintiff for attorney's fees, and upon the application of Virgil Fields for attorney's fees.

Defendant contends that Plaintiff's application for attorney's fees is time barred by reason of Local Rule 7(e), citing Woods Construction Co. v. Atlas Chemical Industries, Inc., 337 F.2d 888 (Tenth Cir. 1964).

In that case, the complaint did not contain a prayer for attorney's fees, but only a prayer for "costs". The trial court, in awarding attorney's fees directed that they be charged as costs. Under those circumstances, the Court of Appeals held that the time limitation of the Local Rule 7(e) barred the assessment of attorney's fees. In the instant case, however, Plaintiff prayed for attorney's fees separately from costs. Plaintiff's costs have already been assessed by the Clerk in conformity with Rule 54(d), Fed.R.Civ.Pro., and Local Rule 7(e).

In this case, Plaintiff's request for attorney's fees is separate and distinct from its request for costs, and Rule 7(e) and Woods Construction Co., supra, are simply not applicable.

The law is well settled that under the "American Rule", attorney's fees are not ordinarily recoverable by the prevailing litigant in Federal Court in the absence of some statutory authority, Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 241, 95 S.Ct. 1612 (1975). In this case, the authority is

provided by Okla.Stat.Tit. 12, § 936, which provides in pertinent part that "in any civil action to recover on [a] ... contract ... the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs."

This statute is the embodiment of a state policy allowing the recovery of attorney's fees in an action of this type. It does not transform attorney's fees into "costs", as that term is generally understood, simply because this is the method employed in the state courts for collection. Alyeska Pipeline Service Co. v. Wilderness Society, supra, at n. 31; People of Sioux County, Neb. v. National Surety Co., 276 U.S. 238, 48 S.Ct. 239 (1928); Missouri State Life Ins. Co. v. Jones, 290 U.S. 199, 54 S.Ct. 133 (1933). Woods Construction Co. v. Atlas Chemical Industries, Inc., supra, 337 F.2d at 890. In Henkel v. Chicago, St. P., M. & O. Ry. Co., 284 U.S. 444, 52 S.Ct. 223 (1932), the Court, discussing the case of People of Sioux County, supra, said:

> This court held that in such a case the attorney's fees was recoverable in the federal court, but was careful to point out that the amount was "not costs in the ordinary sense" and hence was "not within the field of costs legislation" covered by the federal statutes. In this view, the fact that the amount could not be taxed as costs in the federal courts did not preclude the recovery.

284 U.S. at 448, 52 S.Ct. at 225.

In this case, the prevailing party is given a right to attorney's fees by state law. Since this right exists, the federal courts may enforce it by any appropriate procedure, see People of Sioux County, supra. Furthermore, since attorney's fees are not contemplated to be "costs" as that term is generally understood, federal rules relating to the assessment and collection of costs are inapplicable, see Henkel, supra.

Had Plaintiff not requested attorney's fees as a separate part of its requested relief, the rule of Woods Construction, supra, would apply, but, where, as here, the assessment of attorney's fees is separate and distinct from the assessment of costs, then the request is not subject to the limitation imposed by Local Rule 7(e).

The Court has considered the application filed by counsel for the Plaintiff, the pleadings reflected in the file and the evidence produced at the hearing on the question of attorney's fees and finds that the factors to be considered in granting a fee are the time and labor involved and the novelty and difficulty of the issues, whether other employment is lost because of the undertaking, the customary charges of the bar for similar services, the amount involved, and the benefits resulting to the client from the services, together with the contingency or certainty of the compensation and whether the employment is casual or for an established and constant client. Courts have also recognized the propriety of considering the ability and standing of the attorney performing the services and the effect of current economic trends upon prices in general. The Court upon consideration of all applicable factors finds that an appropriate fee to be granted Plaintiff's attorney in this case is the sum of $6,000.00.

The Court has also considered the application of the Defendant Fields' attorney for attorney's fee award for services based upon a theory that Fields became a "prevailing party" when Plaintiff dismissed its action against him with prejudice during the course of the trial. Upon consideration of the applicable law within the Tenth Circuit, Court finds that it would not be proper to award an attorney's fee to the Defendant Fields under these circumstances. The Court therefore declines to grant an attorney's fee to the Defendant Fields upon his application.

ORDERED THAT Plaintiff's attorney, Frank Casey, is granted an attorney's fee of and from the Defendant, American Honda Motor Company, Inc., in the amount of $6,000.00.

IT IS FURTHER ORDERED that the application of Fields' attorney, Ron Skoller, is hereby denied.

DATED this 29th day of October, 1980.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT LOUIS THOMPSON, Appellant Pro Se,	)	
vs.	)	No. 79-C-717-BT
STATE OF OKLAHOMA and JAMES D. KYKER, Warden, et al., Defendants.	)	

O R D E R

Petitioner, Robert Louis Thompson, Jr., has filed this pro se petition for habeas corpus pursuant to 28 U.S.C. §2254, seeking relief from his conviction of the crimes of kidnapping, assault with intent to commit rape, and sodomy. Petitioner is currently incarcerated at the Conner Correctional Center, Hominy, Oklahoma. Trial was held in the District Court of Payne County, Oklahoma, in Case Nos. CRF-75-91, 92 and 93.

Petitioner's first contention is that he was denied his full appellate right in that his counsel did not file an appellate brief. The record indicates that petitioner's counsel properly perfected the appeal, but that after counsel was granted four extensions of time for filing a brief, the Oklahoma Court of Criminal Appeals ordered the appeals summarily submitted, reviewed the case for fundamental error, and affirmed the convictions. The appellate court had the full record for review.

Subsequent to the denial of his appeal, petitioner applied pro se for post-conviction relief in the District Court of Payne County. The District Court dismissed, and, on appeal, the Court of Criminal Appeals remanded for findings of fact and conclusions of law. When the case was resubmitted, the appellate court denied relief. Petitioner then filed a second application for post-conviction relief, this time with assistance of counsel. Upon denial by the Trial Court, appeal was again taken to the Court

of Criminal Appeals. In that appeal an "excellent and extensive" brief was filed. After again carefully reviewing the record, the appellate court affirmed the denial.

In Hill v. Page, 454 F.2d 679, the Tenth Circuit Court of Appeals addressed a case with facts very much like this one, and stated:

> "....The record shows that the direct appeal in No. 33408 was taken by petitioner's retained attorney, but, as was permitted, a brief was not filed and no oral argument was requested. The Rules of the Oklahoma Court of Criminal Appeals then provided that under these circumstances the transcript of the trial and other records brought up on appeal would be examined for 'fundamental error.' The appeal was complete except for the brief and argument, and the court made the examination of the record as indicated and affirmed the convictions. Petitioner's attorney thereafter filed two petitions for rehearing containing points he wished considered, but they were denied. In our opinion the petitioner's appeal as taken did not indicate ineffective assistance of counsel as urged, nor did it constitute a denial of the constitutional rights of petitioner. The procedure followed was not contrary to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, nor Entsminger v. Iowa, 386 U.S. 748, 87 S.Ct.1402, 18 L.Ed.2d 501."

Petitioner has been before the State appellate court three times, the last with full assistance of counsel. Under these circumstances the claim of ineffective assistance of counsel has no merit.

The next ground for relief is that the prosecutor, on several occasions during trial, improperly commented on defendant's failure to tell his story after his arrest, thus denying him the right to remain silent in violation of the Constitution. The State asserts that even if the prosecutor did ask constitutionally impermissible questions regarding petitioner's post-arrest silence, it was harmless error. The record reveals that, on direct examination of one of the arresting officers, the prosecutor, after asking whether defendant had been informed of his Miranda rights, then inquired:

> "Q. Did you ask him any questions?
>
> A. Yes, I did. I asked him questions on what he did, if he was in Stillwater tonight, if he had been with a girl. The only statement he made to me was that he had picked a girl up here in Stillwater at a bar and 'laid her.' He could not remember anything specific regarding the girl, such as her name, or specific

"characteristics of her other than she had pants or slacks on, and that he had taken her to the 'boonies' where the aforementioned act had taken place.

Q. After making that statement did he make any further statements about it other than that?

A. No, he refused to make any more statements after that." (TR. at 276)

During cross-examination of the petitioner, the following exchange took place:

"Q. When the officers stopped you, did you tell them the story you're telling the Court and Jury today?

A. I didn't tell them nothing.

Q. Did you say you picked up a girl in Stillwater and got laid?

A. Yes, sir, I think that's what I said.

Q. Did you tell the officer that she went with you willingly?

A. Yes, sir.

Q. That's Officer Boaz?

A. No, I don't know what I told him. I don't know who he is.

Q. Well, he was the one who testified earlier.

A. I didn't say nothing to him either.

Q. Who did you say anything to?

A. I don't know their names.

Q. Did you tell anybody, any law enforcement authority, what you've told today?

A. No, sir." (TR. at 360-61)

At this point defense counsel objected, and after a conference out of the hearing of the jury the objection was sustained.

The use for impeachment purposes of a defendant's silence at the time of arrest and after he has received Miranda warnings, violate the due process clause of the Fourteenth Amendment. Doyle v. Ohio, 426 U.S. 610 (1976); Hayton v. Egeler, 555 F.2d 599 (6th Cir. 1977). However, in this case, any error was harmless beyond a reasonable doubt under the standard of Chapman v. California, 386 U.S. 18 (1967). The testimony the petitioner

complains about is contained in three questions and answers out of 397 pages of testimony and arguments. Furthermore, there was no reference to these questions in final argument. While the evidence was disputed, the Court is convinced beyond a reasonable doubt that the testimony complained of did not contribute to the verdict. Hayton v. Egeler, supra.

Petitioner's third ground is that the trial court committed constitutional error in its failure to instruct on the elements of assault. The trial court instructed the jury that the crime of assault with intent to commit rape was included in the offense of rape in the first degree. The trial court also gave an instruction on intent. It did not, however, give a separate instruction on the definition or elements of assault, even though requested to do so by defense counsel. (A requested instruction was not submitted; defense counsel simply orally requested that such an instruction be given.)

In a collateral proceeding such as this, petitioner has a heavy burden of showing that the failure to give an instruction "so infected the entire trial that the resulting conviction violates due process." Henderson v. Kibbe, 431 U.S. 145 (1977). Petitioner has not met that burden. Assault is defined as "any wilful and unlawful attempt or offer with force or violence to do a corporal hurt to another." 21 O.S. §641. Instruction No. 5 charging the defendant with rape in the first degree included the following:

> "(3) That the defendant with the use of force and violence and by means of threats of immediate and great bodily harm to one Mary R. Ross did overcome all resistance on the part of the said Mary R. Ross;..."

And the last paragraph of Instruction No. 10 stated:

> "It will be for the Jury to determine whether the prosecutrix in this case consented or made reasonable resistance that was genuine and in good faith, and whether force and violence was used or threats of immediate and great bodily harm, accompanied by apparent power of execution, were in fact made, thereby preventing her resistance."

While this Court may believe it would have been better to define assault specifically, the instructions given, when taken as a whole, adequately instructed the jury as to what they must find to convict petitioner of the lesser included offense.

Petitioner next contends that he was subjected to multiple punishments because the Court submitted the three cases to the jury and because he was sentenced to three consecutive terms. In his Traverse to Appellee's Response, petitioner argues that the consolidation of the three informations for trial violated State law. This argument was made to the Oklahoma Court of Criminal Appeals; that Court has denied relief. Furthermore, there is no constitutional violation involved. The double jeopardy clause does not bar conviction at one trial for multiple offenses arising from one transaction where each offense rests on different criminal elements. Smith v. Gaffney, 462 F.2d 663 (10th Cir. 1972). No constitutional violation occurs when each offense requires proof of a fact not essential to the other. Goldsmith v. Cheney, 447 F.2d 624 (10th Cir. 1971) Neither do consecutive sentences constitute double punishment, where the sentences are imposed on conviction for separate crimes. United States v. Jackson, 482 F.2d 1167 (10th Cir. 1973). Kidnapping, rape, and sodomy are separate crimes requiring proof of different elements. Therefore, there was no error in submitting the three offenses to the jury or in imposing consecutive sentences.

Finally, petitioner contends that the conduct of the State Prosecutor was improper and denied petitioner his right to a fair and impartial trial. Specifically, petitioner points to repeated questions to the prosecutrix regarding threats against her by petitioner when she had already answered. He also complains about improper remarks regarding petitioner's prior conviction, and appeals to the jury to keep the county safe. The Court reviewed the record in the trial, and finds that there are some instances

where the prosecuting attorney was a bit overzealous in his argument and at times his conduct was outside the bounds of the propriety expected of a prosecutor. It is to be noted that whenever defense counsel objected to such remarks, the Trial Court sustained his objections. And the jury was properly instructed to disregard any questions or answers to which objections had been sustained and that statements of counsel are not evidence. He further instructed the jury to disregard any statements of counsel not based upon the evidence.

Under the circumstances, the Court cannot say that the prosecutor's remarks constituted prejudicial error, or that the remarks were so inflammatory as to vitiate the basic fairness of the trial. Bryant v. Caldwell, 484 F.2d 65 (5th Cir. 1973); United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). Whatever prejudice may have crept in was adequately cured by the Trial Court's charge to the jury. Therefore, reversal on this ground is unwarranted.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is denied.

DATED this 29th day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT ON JURY VERDICT

CIV 31 (7-63)

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

NORMA KEEBLE, Individually and as Administrator of the Estate of KENNETH LESLIE KEEBLE, and as Guardian of SUSAN RANA KEEBLE, and KENNETH DeWAYNE KEEBLE, Minors, and ELWIN V. BROMLEY, Individually and as Administrator of the Estate of MICHAEL BROMLEY,

Plaintiffs,

CIVIL ACTION FILE NO. 77-C-332-Bt ✓

JUDGMENT

vs.

THE CUMMINS CONSTRUCTION COMPANY, INC., Defendant,

This action came on for trial before the Court and a jury, Honorable Thomas R. Brett, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, for the Defendant, The Cummins Construction Company, Inc.

It is Ordered and Adjudged that Judgment is hereby granted the defendant, The Cummins Construction Company, Inc., and against the plaintiffs in their various capacities, plus the costs of this action.

FILED

OCT 28 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Dated at Tulsa, Oklahoma, this 28th day of October 28th, 1980.

Thomas R. Brett

HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Jack C. Silver

Clerk of Court
JACK C. SILVER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONNA CHARLENE DAUGHERTY, Plaintiff,	)	
vs.	)	No. 79-C-454-E
BANFIELD OF TULSA, INC., Defendant.	)	

ORDER

Having previously ordered Plaintiff, Donna Charlene Daugherty, to obtain new counsel and file an entry of appearance with this Court on or before October 6, 1980, the Court now finds that Plaintiff has failed to comply with its Order. Wherefore, on its own initiative, the Court having considered the record, it does hereby

ORDER that the captioned case should be and is hereby dismissed without prejudice.

DATED this 28th day of October, 1980.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILEY P. JACKSON, BRENDA J. JACKSON, BURYL J. JACKSON, DONNA L. JACKSON, BAPTIST HEALTH CARE CORPORATION, d/b/a GROVE GENERAL HOSPITAL, and GRAND LAKE BANK, an Oklahoma Corporation, Defendants.	)	CIVIL ACTION NO. 80-C-264-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 27th day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendant, Baptist Health Care Corporation d/b/a Grove General Hospital, appearing by its attorney, Dennis J. Watson; and the Defendant, Grand Lake Bank, an Oklahoma Corporation, appearing by its attorney Sam Harris; and the Defendants Wiley P. Jackson, Brenda J. Jackson, Buryl J. Jackson, and Donna L. Jackson, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Buryl J. Jackson and Donna L. Jackson, were both served with Summons, Complaint and Amendment to Complaint on May 13, 1980 and July 25, 1980, respectively, as appears from U.S. Marshals Services herein; that Defendants Wiley P. Jackson and Brenda J. Jackson were both served with Summons, Complaint and Amendment to Complaint on May 14, 1980 and July 23, 1980, respectively, as appears from U.S. Marshals Services herein; that Defendant, Baptist Health Care Corporation d/b/a Grove General Hospital, was served with Summons, Complaint and Amendment to Complaint on May 12, 1980 and July 22, 1980, respectively, as appears from U.S. Marshal

Service herein; and that Defendant, Grand Lake Bank was served with Summons, Complaint, and Amendment to Complaint on July 22, 1980.

It appearing that the Defendant, Baptist Health Care Corporation d/b/a Grove General Hospital, has filed its answer on May 27, 1980; that Defendant, Grand Lake Bank has filed its answer on July 28, 1980; and that Defendants, Wiley P. Jackson, Brenda J. Jackson, Buryl J. Jackson, and Donna L. Jackson have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot 9, Block D, Sailboat Bridge Addition to the Town of Grove, Oklahoma, according to the recorded plat thereof, Delaware County, Oklahoma.

THAT the Defendants, Wiley P. Jackson and Brenda J. Jackson, did, on the 27th day of April, 1978, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the sum of $22,500.00 with 8 1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Wiley P. Jackson and Brenda J. Jackson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $23,578.84 as unpaid principal with interest thereon at the rate of 8 1/4 percent per annum from February 27, 1980 until paid, plus the cost of this action accrued and accruing.

The Court further finds that Baptist Health Care Corporation d/b/a Grove General Hospital is entitled to judgment against Wiley Jackson and Brenda Jackson in the amount set out in its Answer, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that Grand Lake Bank, an Oklahoma Corporation, is entitled to judgment against Wiley Jackson and Brenda Jackson in the amount of $600.00, plus court cost of $7.00, entered on September 14, 1979, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Wiley P. Jackson and Brenda J. Jackson, in personam, for the sum of $23,578.84 with interest thereon at the rate of 8 1/4 percent per annum from February 27, 1980, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Baptist Health Care Corporation d/b/a Grove General Hospital have and recover judgment, in rem, against the Defendants, Wiley P. Jackson and Brenda J. Jackson, in the amount set out in its Answer, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Grand Lake Bank, an Oklahoma Corporation, have and recover judgment, in rem, against the Defendants, Wiley Jackson and Brenda Jackson, in the amount of $600.00, plus court cost of $7.00, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Buryl J. Jackson, and Donna L. Jackson.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

BY: ROBERT P. SANTEE
Assistant United States Attorney

DENNIS J. WATSON
Attorney for Defendant, Baptist Health Care corporation d/b/a Grove General Hospital

SAM HARRIS, Attorney for Defendant
Grand Lake Bank

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PLAINS TRANSPORT OF KANSAS, INC., a corporation, Plaintiff, vs. UNION MECHLING CORPORATION, a corporation, Defendant.	)	No. 77-C-511-C

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration upon the Stipulation for Dismissal With Prejudice of the above-captioned cause and the Court being fully advised, and for good cause shown, IT IS ORDERED that plaintiff's Complaint and each and every claim for relief set forth therein should be and are dismissed with prejudice to bringing a future action thereon with each party to bear its own costs and attorneys' fees expended herein.

/s/ H. Dale Cook

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SOPHIA INGRAM, SSA/N: 431-28-7994, Plaintiff, vs. PATRICIA HARRIS, Secretary of Health and Human Services of the United States of America, Defendant.	)	80-C-28-BT

JUDGMENT

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the defendant, Secretary of Health and Human Services of the United States of America (Secretary), and after due proceedings had, and upon examination of the pleadings and record filed herein, including the Briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed simultaneously herewith that the final decision of the Scretary is supported by substantial evidence as required by the Social Security Act, and should be affirmed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the final decision of the Secretary should be and hereby is affirmed.

Dated this 27 day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOPHIA INGRAM, SSA/N: 431-28-7994, Plaintiff, vs. PATRICIA HARRIS, Secretary of Health and Human Services of the United States of America, Defendant.	)	80-C-28-BT

MEMORANDUM OPINION

Plaintiff, Sophia Ingram, brings this action pursuant to 42 U.S.C. §405(g), seeking judicial review of the final administrative decision of the Secretary of Health and Human Services denying her disability benefits provided for in Sections 216(i) and 223, respectively, of the Social Security Act, as amended. 42 U.S.C. §§416(i) and 423. Plaintiff alleges she became unable to work on August 9, 1975, because of degenerative spinal arthritis. Plaintiff filed her application for disability insurance benefits and supplemental security income benefits on May 11, 1978.[1] Her application was denied and the case was considered de novo before an Administrative Law Judge, where plaintiff was represented by counsel on January 23, 1979. On February 12, 1979, the Administrative Law Judge filed his decision, denying the plaintiff benefits. This decision was affirmed by the Appeals Council and plaintiff thereafter commenced this action requesting judicial review.

1/ Plaintiff had filed two other applications claiming disability insurance benefits as a result of alleged degenerative arthritis. [September 3, 1975 and August 10, 1976] Each of these applications was denied and plaintiff did not exercise her right to a hearing following either adverse decision.

An applicant for Social Security Disability Benefits has the burden of establishing that she was disabled on or before the date on which she last met the statutory earnings requirements. McMillin v. Gardner, 384 F.2d 596 (10th Cir. 1967); Stevens v. Mathews, 418 F.Supp. 881 (USDC WD Okl. 1976); Dicks v. Weinberger, 390 F.Supp. 600 (USDC WD Okl. 1974); see Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971).

The term "disability" is defined in the Social Security Act as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which....has lasted....for a continuous period of not less than 12 months." 42 U.S.C. §§416(i)(1)(A); 423(d)(1)(A); 20 C.F.R. 404.1501(a)(i).

The scope of the Court's review authority is narrowly limited by 42 U.S.C. §405(g). The Secretary's decision must be affirmed if supported by substantial evidence. Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966); Stevens v. Mathews, supra. Substantial evidence is more than a scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971); Beasley v. Califano, 608 F.2d 1162 (8th Cir. 1979); Stevens v. Mathews, supra. However, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131 (1966); Stevens v. Mathews, supra.

In conducting this judicial review, it is the duty of this Court to examine the facts contained in the record, evaluate the conflicts and make a determination therefrom whether the facts support the several elements which make up the ultimate administrative decision. Heber Valley Milk Co. v. Butz, 503 F.2d 96 (10th Cir. 1974); Nickol v. United States, 501 F.2d 1389 (10th Cir. 1974); Stevens v. Mathews, supra. In this case, the ultimate administrative decision is evidenced

by the Findings of the Administrative Law Judge before whom plaintiff originally appeared. The Findings of the Administrative Law Judge were as follows: (TR 33)

> "1. Claimant was born November 27, 1924, completed the 8th-grade in school, and has been employed as a checker in a grocery store, and as a nurse's aide in nursing home.
>
> 2. Claimant met the special earnings requirements of the Act for disability purposes on August 25, 1975, the alleged date of onset, and continued to meet said requirements through December 31, 1978, but not thereafter.
>
> 3. Claimant has degenerative disc disease of the cervical spine.
>
> 4. Claimant has no impairment or combination of impairments which would prevent her from engaging in all substantial gainful activity.
>
> 5. Claimant has the residual functional capacity to engage in light to medium jobs such as grocery store checker or nurse's aide, which she has in fact performed in the past and which positions exist in substantial numbers in the region where the claimant resides and in several regions of the country.
>
> 6. Claimant has not been prevented from engaging in all substantial gainful activity for any continuous period beginning on or before the date of this decision which has lasted or could be expected to last for at least twelve months.
>
> 7. Claimant was not under a 'disability' as defined by the Social Security Act, as amended, at any time prior to the date of this decision."

The elements of proof which should be considered in determining whether plaintiff has established a disability within the meaning of the Act are: (1) objective medical facts; (2) medical opinions; (3) subjective evidence of pain and disability; and (4) the claimant's age, education and work experience. Hicks v. Gardner, 393 F.2d 299 (4th Cir. 1968); Stevens v. Mathews, supra; Morgan v. Gardner, 254 F.Supp. 977 (USDC ND Okl. 1966); Meek v. Califano, 488 F.Supp. 26 (USDC Neb. 1979).

On September 3, 1975, plaintiff filed an application for disability benefits claiming degenerative arthritis of the spine. (TR 74-77) This application was denied November 12, 1975. (TR 78-79) On August 10, 1976, plaintiff filed another application for disability benefits claiming arthritis. (TR 80-83) This application was denied December 9, 1976. (TR 84-85) On January 31, 1977 (TR 86) she filed a Request for Reconsideraton, and the claim was reconsidered and denied on June 28, 1977. (TR 87-88) Plaintiff filed the present application for disability benefits on May 11, 1978. (TR 90-93) A formal hearing was had before the Administrative Law Judge on January 23, 1979, and his decision was rendered on February 12, 1979. (TR 23-34)

Plaintiff has been unemployed since August of 1975. (TR 48-49; 58-59) She finished the eighth grade. (TR 47) She has worked as a Nurses Aide (TR 48) and a checker at a grocery store. (TR 50)

Plaintiff testified as to disabling pain in her neck, head, shoulders, low back and the inability to move her arms. Plaintiff further testified she is able to prepare her own meals using only prepared foods such as lunch meat, cheese, bread, and cereals but that she was unable to lower the oven door to heat TV dinners. She further testified she is unable to perform her own housekeeping chores and that it takes all morning to get her night clothes off. She testified she turns the shower on with her feet.

Plaintiff was seen on October 30, 1975, by H. O. Anderson, M.D., who rendered a written report on the same date. (TR 158-161) At the time she saw Dr. Anderson plaintiff was wearing a neck collar which had been fitted by a chiropractor. Dr. Anderson notes all of her treatment had been primarily chiropractic. Dr. Anderson stated in his report it was "unrealistic that she was not able to bend or move her head and neck any more than she did". He stated the dorsal spine revealed no real evidence of pathology, as well as the low back. The scoliosis was in evidence. Dr. Anderson concluded there was "insufficien objective findings to make me feel that she is disabled".

Plaintiff was seen by Dr. John A. Brasfield, M.D. on March 22, 1977 and he rendered a written report. He stated in his report:

"It is felt that the subject individual has an appreciable disability, as a result of degenerative changes, degenerative disc disease at C-5,6 and C-6,7, with osteophytic spurring at these levels. These findings are sufficient apparently to cause some discomfort, but, should not be totally disabling.... It would seem that the possibility of the patient being subjected to cervical traction would be indicated, but I doubt very seriously if this patient would cooperate with this, as she seems to be completely satisfied with her present regime of treatment under the supervision of a chiropractor."

Plaintiff was seen by Ronald C. Passmore, M.D., a psychiatrist, on June 17, 1977, and he rendered a written report on the same date. (TR 187-189) Dr. Passmore stated:

"Mrs. Ingram appears to be showing conversion symptoms with her neck problem. She is very concerned about this and this interferes with her working and with her normal daily activities. She has no insight into the fact that this might be a psychosomatic problem. Because of this it would be difficult to treat her. She does not, according to the write up, have disabling neck injuries but has fixed on this to the point she is allowing these symptoms to be exaggerated and to prevent her from living a normal life. She is competent to handle any funds she might have."

Plaintiff was seen by Robert T. Rounnsaville, M.D. on June 5, 1978, and he rendered a written report of the same date. (TR 190-191) Dr. Rounnsaville stated:

"In my opinion, this patient's difficulties are purely functional. This appears to be a severe hysterical reaction. She has marked emotional disturbance and needs a psychiatric evaluation. She has no orthopedic problem and is not disabled from this point of view. The psychiatriac difficulties should be emphasized.... It is strongly recommended that this patient have a psychiatriac evaluation and/or institutional care."

On August 11, 1978, plaintiff's chiropractor, D.A. Boos, D.C., (TR 143) rendered a progress report wherein he reported a prognosis as follows:

"Patient due to chronic nature of syndrome will probably remain clinical. Treatment is indicated peroidically(sic) to subdue further degeneration."

On June 29, 1978, plaintiff was seen by Gary M. Lee, M.D., for a psychiatric examination and a report was rendered the same date. (TR 192-193)

Dr. Lee reported plaintiff stated her problem was her neck. Plaintiff also told Dr. Lee she took Anacin or Extra Strength Tylenol for her pain but she did not take any nerve medicine. Dr. Lee stated plaintiff was neatly dressed in clean clothes and related well during the interview. He indicated there was no depression, anxiety or organic brain syndrome. He further stated there were no hallucinations, delusions or psychotic behavior. He reported during the interview plaintiff held her arms crossed in front of her,but that when she left she was able to comfortably pick up her purse and open the doors. Dr. Lee concluded any problems should not be evaluated on a pyschological basis.

Plaintiff was admitted to Saint Francis Hospital on July 10, 1978, and was discharged on July 13, 1978 (TR 194-200) She was under the care of Henry Modrack, M.D., an orthopedic surgeon, and was seen in consultation by Dr. Coates, a neurological surgeon. Dr. Modrack noted plaintiff held her upper extremities in an acutely flexed position at the elbows with her shoulders in the "shrug position" when seen in the office. He concluded:

> "....An EMG had been performed and revealed change in the C-6 and C-7 dermatomes. The patient was admitted to the hospital for a cervical myelogram.... ....[a]nd a cervical myelogram was accomplished revealing slight defects at the C-5,6 and C-6-7 levels suggestive of defect secondary to hypertrophic changes of the vertebral bodies. There was also some question about the possibility of ruptured disc at those levels. The patient was seen in consultation by Doctor Coates, he agreed with the impression of disc disease at the C-5,6 and C-6,7 levels. However, her symptoms were not very marked, she did improve in the hospital an(sic) it was felt that she should be continued on a conservative treatment, therefore she was dismissed from the hospital.... to be followed in the office."

On July 31, 1978, Dr. Modrack rendered a written report. (TR 201-202_ He stated in this report:

> "I feel that the patient has degenerative disc disease. The possibility of ruptured cervical disc must be entertained. She was referred for EMG evaluation and consideration of a cervical myelogram.
>
> "The patient was admitted to St. Francis Hospital on July 10, 1978. She underwent a cervical myelogram on July 11, 1978. The results of this test showed mild deforming spondylotic changes. ....
>
> "The patient underwent an EMG on June 23, 1978. The results of this test represented findings compatible with bilateral C5 nerve root irritation."

On September 19, 1978, Dr. Modrack rendered a report (TR 203-204) wherein he stated:

> "I feel that the patient's symptoms are secondary to:
>
> "1. Degenerative disc disease, multiple levels, cervical spine.
>
> "2. C5 nerve root irritation, bilateral.
>
> "I feel that these may be progressive. Because of the severity of her current symptoms, I feel that she has total impairment. I feel that this total impairment is temporary and as soon as the acute symptoms subside, she will undoubtedly have some permanent partial impairment."

On December 8, 1978, Dr. Modrak rendered another report, after seeing plaintiff on October 23, 1978. (TR 216) He stated she was again informed of the nature of the diagnosis, prognosis and surgical treatment and complication and plaintiff told him she would advise him later.

On January 12, 1979 (TR 212-213) John A. Coates, M.D., who saw plaintiff in consultation, rendered a report concerning the July hospitalization. He stated plaintiff held her "shoulders at her side with flexion of the forearms bilaterally in somewhat of a protective attitude." Dr. Coates was of the opinion there was no ruptured disc and surgical treatment was unnecessary.

On January 22, 1979, Dr. Boos, D.C., rendered another report. He stated (TR 215):

> "Mrs. Ingram was last seen by me on January 17, 1979, and is at this time a clinical statis(sic) again, however, the right arm is still being affected. It is my opinion that Mrs. Ingram has a permanent degenerative cervical disc and will be unable to be fully corrected, thus making a pereanent(sic) disability apparent."

On May 23, 1979, Anthony C. Billings, M.D., rendered a report. (TR 217-218) He stated:

> "This patient is 100% disabled, unable to perform ordinary manual labor of any kind. She is unable to use the right arm except to feed herself and the left arm to dress herself. If there is any hope of recovery, she should have a surgical procedure done with decompression of the C-6,7 nerve roots. Even with this she will require approximately six months to twelve months of intensive rehabilitation with physical therapy to the right shoulder."

On June 10, 1979, plaintiff entered Saint Francis Hospital and was discharged on June 25, 1979. (TR 221-230) She underwent an anterior cervical discetomy fusion at C6-7 performed by Drs. Billings and Beck. In the hospital records (TR 222) Dr. Benjamin G. Benner made the following comments in the History and Physical:

> "....Initial impression was cervical spondylosis and frozen right shoulder. She was admitted for surgery and this was performed on the 12th by Dr. Billings and Dr. Beck at C6-7. There was a fair amount of bleeding at the time of C6-7 and therefore, the other level was not attempted at that time. Postoperatively, the patient had unremarkable course. She was kept longer than the average because she required a considerable amount of physical therapy in order to improve the range of motion in her shoulder. At the time of discharge, she had made marked improvement and she was given instructions on continuation at home."

On July 12, 1979, in a report, (TR 232) Dr. Billings stated the patient had bony spurs and ruptured disc material compressing the nerves to the right shoulder and her right shoulder was frozen. He stated the patient had severe contracture and ankylosis of the right shoulder join with weakness in the upper extremeity. He was hopeful the patient would improve and stated only "time" will "tell".

The May 23, 1979 and July 12, 1979, reports of Dr. Billings, as well as the hospital record from Saint Francis Hospital covering the hospitalization from June 10, 1979 to June 25, 1979, were not before the Administrative Law Judge when he rendered his decision. Said reports and records were, however, submitted to the Appeals Council who considered them on the review of the Administrative Law Judge's decision. The Appeals Council studied the additional evidence and stated:

> "In its consideration of your case, the Appeals Council also studied the additional evidence submitted by your representative as well as the argument on your behalf. Dr. Billings, in his report of May 23, 1979, said that you were disabled because of your neck and arm impairments, but the findings he reported were similar to those already in the record.
>
> "Even though you underwent surgery in June 1979, the Appeals Council believes that the assessment by the administrative law judge is correct and that you are able to engage in at least light physical activity. "

In Social Security Disability cases, the claimant bears the burden of showing the existence of disability as defined by the Act. Parker v. Harris, 626 F.2d 225 (2nd Cir. 1980); Demandre v. Califano, 591 F.2d 1088, 1090 (5th Cir. 1979); Lewis v. Califano, 574 F.2d 452 (8th Cir. 1978); McDaniel v. Califano, 568 F.2d 1172 (5th Cir. 1978); Turner v. Califano, 563 F.2d 669 (5th Cir. 1977); Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972).

The plaintiff has the burden of proving some medically determinable impairment which prevents her from engaging in any substantial gainful activity. 42 U.S.C. §423(d)(1) and (3). Albertson v. Califano, 453 F.Supp. 610 (USDC Kan. 1978); Garrett v. Califano, 460 F.Supp. 888 (USDC Kan. 1978).

It is not the function of the Court to re-weigh the evidence. See, e.g., Trujillo v. Richardson, 429 F.2d 1149 (10th Cir. 1970).

In the instant case it seems clear that plaintiff is afflicted with some back, neck and shoulder problems. The issue present, however, is whether the record support plaintiff's contention that her impairment is "of such severity" that she cannot engage in gainful employment.

In reaching a conclusion as to disability, both objective and subjective factors are to be considered. These include objective medical facts, diagnoses or medical opinions based on such facts, subjective evidence of pain or disability testified to by the claimant, and the claimant's educational background, age, and work experience. Parker V. Harris, supra, 626 F.2d 225, 231; Rivera v. Harris, 623 F.2d 212 (2nd Cir. 1980).

Additionally, the credibility of witnesses is a matter for the sound judgment of the Administrative Law Judge.

The Administrative Law Judge found (TR 32):

> "....The Administrative Law Judge observed claimant move her arms and straighten them at the hearing, and also noted claimant was well-dressed and groomed. Claimant's hair was combed, her fingernails were well-manicured, and it was noted her tennis shoes were properly laced and tied...."

In his decision the Administrative Law Judge noted and found plaintiff took only aspirin and Tylenol occasionally for pain relief and never, "until recently sought and received medical treatment".

The Administrative Law Judge was convinced (i) plaintiff's physical problems are of a mild nature and she could perform sustained work activity of a light to medium nature if she chose to do so; and (ii) plaintiff's allegation of extreme pain was overstated and self-serving. He also concluded plaintiff did not possess a mental or emotional disorder which would prevent work activity.

The medical reports indicated plaintiff does have problems with her neck, shoulders and back, but they have not been severe enough to prevent her doing light to medium work. Chaney v. Califano, 588 F.2d 958 (5th Cir. 1979); Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971). Similarly, plaintiff's emotional problems do not rise to the level of a disabling psychiatric impairment. Gentile v. Finch, 423 F.2d 244 (3rd Cir. 1970); Albertson v. Califano, 453 F.Supp. 610 (USDC Kan. 1978).

After thoroughly examining the administrative record before it, the Court is of the opinion that substantial evidence is contained therein to support the Secretary's decision that plaintiff is not disabled within the meaning of the pertinent provisions of the Social Security Act and regulations applicable thereto.

Accordingly, the Secretary's decision should be affirmed and a Judgment of affirmance will be entered this date.

IT IS SO ORDERED this 27th day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARIE FAYE EVANS,

Plaintiff,

vs.

HARTFORD LIFE INSURANCE COMPANY, a Massachusetts corporation; and DICK TANNER,

Defendants.

No. 78-C-327-E

AMENDED JUDGMENT

Upon consideration of the pleadings, the briefs presented by counsel for the parties, and the evidence offered at the trial of the issues, as is more fully set out in the Findings of Fact and Conclusions of Law filed of even date,

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be and hereby is granted in favor of the Defendant, Dick Tanner, and against Plaintiff, Marie Faye Evans, on Plaintiff's claims in this action against such Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment be and hereby is granted in favor of the Plaintiff, Marie Faye Evans, and against Defendant, Hartford Life Insurance Company, a Massachusetts corporation, in the amount of $24,000.00 including prejudgment interest at the rate of 6% and postjudgment interest at 12% per annum from the date of rendition of the judgment, together with her costs and attorneys' fees in the amount of $5,961.25.

It is so Ordered this 27th day of October, 1980.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JANDEBEUR'S MOTOR COMPANY, INC., an Oklahoma Corporation,

Plaintiff,

vs.

AMERICAN HONDA MOTOR COMPANY, INC., and VIRGIL FIELDS,

Defendants.

CASE NO. 78-C-168-E

JUDGMENT

This matter coming on for hearing upon Motion to Dismiss of Defendant, Virgil Fields, and all parties being present in open Court and represented by their respective counsel of record, and the Court having heard argument and being fully advised in the premises, orders and adjudges that Defendant, Virgil Fields, be and is dismissed with prejudice from this cause upon Plaintiff's offering thereof. It is further ordered and adjudged that the issue of attorney's fees and costs is reserved for determination by this Court.

Dated this 23rd day of ~~April~~ October, 1980.

DISTRICT COURT JUDGE.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 22 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
PHILLIP M. ALBERTY, Defendant.	)	CIVIL ACTION NO. 80-C-328-E

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Phillip M. Alberty, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Phillip M. Alberty, was personally served with Summons and Complaint on June 12, 1980 and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Phillip M. Alberty, for the principal sum of $580.00, plus the accrued interest of $111.43, as of April 30, 1980, plus interest at 7% from April 30, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of $580.00 from the date of Judgment until paid.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

NOTE: THIS FORM IS TO BE MAILED [illegible] AND THE LITIGANTS NOTIFIED UPON RECEIPT.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
DENISAL L. McCLENDON, Defendant.	)	CIVIL ACTION NO. 80-C-424-E

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Denisal L. McClendon, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Denisal L. McClendon, was personally served with Summons and Complaint on August 14, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Denisal L. McClendon, for the principal sum of $2,312.00, plus the accrued interest of $483.56 as of June 20, 1980, plus interest at 7% from June 20, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of $2,312.00 from the date of Judgment until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

NOTE: THIS ORDER IS TO BE MAILED BY COUNSEL AND IMMEDIATELY.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LINDA S. GLOVER, Defendant.	)	CIVIL ACTION NO. 80-C-390-E

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Linda S. Glover, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Linda S. Glover, was personally served with Summons and Complaint on August 28, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Linda S. Glover, for the principal sum of $1,290.00 plus the accrued interest of $367.48 as of May 6, 1980, plus interest at 7% from May 6, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of $1,290.00 from the date of Judgment until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

NOTE: THIS ORDER IS TO BE MAILED BY PLAINTIFF TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 23 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN RE:)
)
BOBBY JOE JACKSON,)
)
Petitioner,)
)
vs.) No. 80-C-260-E
)
CHARLEY D. CARTER, et al.,)
)
Respondents.)

ORDER

The Court has before it for consideration Petitioner's Petition for Writ of Habeas Corpus. Petitioner, Bobby Joe Jackson, entered a voluntary plea of guilty to the crime of Burglary of an Automobile on May 1, 1978, Case No. CRF-77-3425 and was sentenced by the Court to a term of seven (7) years imprisonment. Pursuant to the Post Conviction Procedures Act, Title 22 O.S. 1977, § 1080 et seq., Petitioner filed an application for post-conviction relief in the District Court of Tulsa County. The trial court thereafter dismissed Petitioner's application on January 31, 1980. Petitioner then filed an appeal of the district court's order denying post-conviction relief to the Oklahoma Court of Criminal Appeals, PC-80-121. On April 14, 1980, the Oklahoma Court of Criminal Appeals affirmed the District Court's order. The present application for writ of habeas corpus was filed on May 5, 1980 pursuant to 28 U.S.C.A. § 2254 and on May 9, 1980 an order was entered directing Respondent to respond to said petition. On June 23, 1980 the response was filed and on July 11, 1980 the Amended Application for Writ of Habeas Corpus was filed by the Petitioner.

The Petitioner presents the following issues for this Court's consideration:

(1) The trial court erred in accepting his guilty plea without sufficient evidence to sustain his conviction, and

(2) Denial of effective assistance of counsel at trial.

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The file reveals that the Petitioner has exhausted his state court remedies. A transcript of the state court proceedings was received by this Court. The Court has reviewed the entire file, including the state court proceedings and the case is now ready for dispositive ruling.

In Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), the Supreme Court laid down the test applicable to a determination of whether the Petitioner was entitled to an evidentiary hearing, as follows:

> ... If (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

In reviewing the record, under the test of Townsend, the Court finds that an evidentiary hearing is not necessary.

Petitioner in raising issue number one states that the trial court has a full duty not to accept a guilty plea where the evidence is such that a fact finder would fail to find him guilty of the offense as charged. The Court has been provided with a transcript of the proceedings on May 19, 1978 in the District Court of Tulsa County, Oklahoma, in case no. 77-3425. Therein the Court inquired whether the Petitioner was then charged with the second page allegations, after former conviction of a felony status. Then the state advised the Court that the state desired to withdraw those allegations. Counsel for the Petitioner then advised the Court that Petitioner wished to waive his right to jury trial and enter a plea of guilty to Burglary of an Automobile (non-AFCF).

Thereafter the Court administered the oath to the Petitioner who testified he was 37 years old and had completed high school.

Then Petitioner testified he was not taking any drugs, medication or alcohol nor was he mentally incompetent. The Court inquired whether Petitioner was mentally competent to understand the proceedings and to aid in his defense which Petitioner replied that he was. The Court advised Petitioner of his rights to a jury trial and that he gave up all such rights by entering a plea of guilty. Petitioner responded that he understood and desired to do so. The Court inquired whether Petitioner did so freely and voluntarily to which he replied "yes ma'am." At page 4 and 5 of the transcript of proceedings of May 19, 1978 the following transpired:

> "The Court: Do you wish to waive your non-jury trial and enter a plea of guilty?
>
> Bobby Joe Jackson: Yes ma'am.
>
> The Court: Are you pleading guilty freely and voluntarily?
>
> Bobby Joe Jackson: Yes ma'am.
>
> The Court: Has anyone promised anything or forced you to plead guilty?
>
> Bobby Joe Jackson: No ma'am.
>
> The Court: Are you guilty of the crime of Burglary of an auto?
>
> Bobby Joe Jackson: Yes ma'am.
>
> The Court: Do you understand that the range of punishment for this crime is two to seven years in the custody of the State Department of Corrections?
>
> Bobby Joe Jackson: Yes ma'am."

The Court then accepted the Petitioner's guilty plea and found him guilty of Burglary of an Automobile, non-recidivist. Thereupon the Court stated:

> "The Court: Bobby Joe Jackson, do you know of any reason why judgment and sentence should not be pronounced?
>
> Bobby Joe Jackson: No ma'am."

At no time after the plea of guilty was entered by Petitioner

in Case No. CRF-77-3425 did Petitioner timely move to withdraw his plea of guilty pursuant to 22 O.S. § 517 nor did he appeal said conviction under the Writ of certiorari procedures provided by law and advised to Petitioner by the Court. Defendant cites In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, (1970) in support of his preposition. That case did hold that the due process clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. The Petitioner also cites Hicks v. Oklahoma, No. 78-6885 Decided June 16, 1980 in which the Court held that the state had deprived the Petitioner of due process of law. The members of the jury were instructed in accordance with the habitual offender statute then in effect in Oklahoma. In that case the Court held that Oklahoma denied the petitioner the jury sentence to which he was entitled under state law on the conjecture that a jury might have imposed a sentence equally as harsh as that mandated by the invalid habitual offender statute. The petitioner in Hicks, supra, had a statutory right to have a jury fix his punishment in the first instance and that was the right which was denied.

However, the case at hand stands upon a different set of circumstances. In this case the Petitioner alleges that coercion existed and that threats of After Former Conviction of a felony were employed. A review of the trial transcript shows that Petitioner was clearly asked whether he had been promised anything or had been forced to plead guilty to which he replied in the negative. The Petitioner was asked directly if he was guilty of the crime of burglary of an automobile to which he replied, "Yes ma'am".

A tendering of a guilty plea does not foreclose a hearing on a petition for habeas corpus alleging matters outside the state court record. However, conclusory allegations do not suffice. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d, 763 (1970). In the case at hand the court advised

the Defendant of the nature of the charges and the consequences of a guilty plea. The Court, it appears, had ample grounds to satisfy itself that there was a factual basis for the guilty plea and the Court addressed the Defendant personally to determine if the plea of guilty was made voluntarily.

A conviction after a plea of guilty rests upon the Defendant's own admission in open court that he committed the acts with which he is charged. Brady v. U.S., 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747; McCarthy v. U.S., 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969). The transcript of the record is sufficient to affirmatively show that the guilty plea of the Petitioner was intelligent and voluntary. Langkeit v. State of Okla., 414 F.Supp. (W.D. Okla. 1976); Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

It is the opinion of this Court after a careful consideration of the record, arguments made by Petitioner and authorities that the trial court did not err in accepting Petitioner's guilty plea and that there was sufficient evidence to sustain his conviction.

The second issue raised by Petitioner was that he was denied effective assistance of counsel at trial. In the case of Dyer v. Crisp, 613 F.2d 275 (Tenth Cir. 1980), the Court abandoned the "sham and mockery" test which had previously been applied in determining whether there had been effective assistance of counsel. The Court held that the Sixth Amendment guarantee provides that an accused by afforded "reasonably competent assistance of counsel." When tested against the new standard of reasonably competent counsel, the Petitioner's claim that his constitutional right to counsel has been violated fails to meet the test. The record supports the conclusion that the representation received did not fall below the minimum standard of reasonable competence which is expected of a defense attorney.

Petitioner appeared in court with assistance of counsel and pleaded guilty to the offense as charged, apparently resulting

from a prior plea bargaining situation. Petitioner was presented the opportunity to raise objections to the trial proceedings or to counsel's representation but did not do so. Therefore, based upon the record and transcript of the proceedings this Court holds that Petitioner knowingly, intelligently and voluntarily entered his plea of guilty in the instant case. The Court in addition notes that the State of Oklahoma withdrew its second page allegations, which would have enhanced his punishment and declined to pursue bail jumping charges against said Petitioner.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C.A. § 2254, be and the same is hereby denied.

It is so Ordered this 23RD day of October, 1980.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FLEETA A. HALEY, individually and as Next Friend for her minor child, ALLEN HALEY, JR., ALLEN HALEY, SR., and ALLEN HALEY, JR.,	)	
Plaintiffs,	)	
vs.	)	CIVIL ACTION NO. 80-C-364-C
UNITED STATES OF AMERICA and DR. CHARLES ALLEN,	)	
Defendants.	)	

FILED

OCT 23 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

AND NOW, to-wit, this 23rd day of October, 1980, upon consideration of the Motion to Dismiss Dr. Charles Allen heretofore filed by Defendant, United States of America,

IT IS HEREBY ORDERED that said Motion is granted.

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 75-C-237-E
TIARA FURNITURE, INC.; JANE LITTLEJOHN, Executrix of the Estate of George C. Littlejohn; and ROBERT L. DOW, Defendants.	)	

ORDER

Upon consideration of the pleadings, the transcript of the trial and the briefs presented by counsel for the parties, as is more fully set out in the Findings of Fact and Conclusions of Law filed of even date,

It is Ordered, adjudged and decreed that Judgment be and hereby is granted in favor of the Plaintiff and against the Defendant on Plaintiff's claims in this action.

It is further Ordered that Defendants are entitled to an offset of $60,000.00 resulting in a deficiency on the guarantee in the amount of $15,783.33, together with interest at the rate of 5.5 percent per annum from February 2, 1974 to date in the amount of $5,232.26 entitling a recovery of $21,015.59 principal and interest.

It is so Ordered this 23RD day of October, 1980.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SAMUEL J. LEFRAK, an individual, Plaintiff vs. CURTIS WILSON, an individual, and COOK FARM IMPLEMENT COMPANY, INC., a Kansas corporation, Defendants	)	No. 80-C-195-C

FILED

OCT 23 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT DISMISSING ACTION WITH PREJUDICE
AND PROVIDING FOR DISTRIBUTION OF FUNDS ON DEPOSIT

In accordance with the Stipulation therefor filed by the parties herein:

IT IS ORDERED on this 23rd day of October, 1980, that the Complaint filed herein by Plaintiff Samuel J. LeFrak and the Counterclaim filed herein by Defendant Curtis Wilson be dismissed with prejudice, with each party to bear his own costs.

FURTHER ORDERED, that upon maturity of the certificate of deposit purchased by the Clerk of the Court pursuant to Order of this Court dated August 15, 1980, all sums on deposit with the Clerk, together with all interest thereon, be distributed Thirty Per Cent (30%) to Plaintiff Samuel J. LeFrak, by check payable to Samuel J. LeFrak and John S. Athens, his attorney, and Seventy Per Cent (70%) to Defendant Curtis Wilson, by check payable to Curtis Wilson and David L. Crutchfield, his attorney.

s/H DALE COOK
Chief United States District Judge

Submitted by:

John S. Athens
John S. Athens, Attorney for
SAMUEL J. LEFRAK

David L. Crutchfield
David L. Crutchfield, Attorney
for CURTIS WILSON

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SAMUEL RAY STOUT,)
)
Petitioner,)
)
vs.) No. 80-C-423-C
)
DAVE FAULKNER, et al.,)
)
Respondents.)

FILED

OCT 23 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

On August 5, 1980, the petitioner filed a Petition for a Writing of Habeas Corpus regarding his arrest in Tulsa County on a fugitive warrant and extradition to Texas which he claims was illegal. He prays for an order returning him to Oklahoma ". . . to be extradited properly. . ."

The law is clear that Habeas Corpus will not lie if the person seeking the writ is not in the physical custody of the official to whom the writ is directed. Whiting v. Chew, 273 F.2d 885 (4th Cir. 1960), cert. denied 362 U.S. 956, 80 S.Ct. 872, 4 L.Ed.2d 873 (1960); Gregg v. State of Tenn., 425 F.Supp. 394 (E.D.Tenn. 1976). At the time of filing of this Habeas Corpus action, petitioner was a prisoner in the Harris County Detention Center, Humble, Texas. Therefore petitioner's request is hereby dismissed.

Petitioner's request seeking a Temporary Injunction barring the 176th District Court of Harris County, Texas from further prosecution until this Court renders a decision on his Petition for Writ of Habeas Corpus is now moot and is hereby overruled.

It is so Ordered this 22nd day of October, 1980.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOBBY F. BLACKSTON, d/b/a HOMESTEAD REALTY,

Plaintiff,

vs.

TERMINAL DRIVE CORPORATION and ROBERT A. READ,

Defendants.

79-C-533-BT

JUDGMENT

This case was called for trial and trial before a jury commenced on October 22, 1980. The plaintiff, after introduction of evidence, rested and the defendants moved to dismiss. The Court heard oral argument on said Motions to Dismiss on October 23, 1980. At the conclusion of argument, the Court made Findings of Fact and Conclusions of Law from the bench and sustained the defendants' Motions to Dismiss.

IT IS, THEREFORE, ORDERED the defendants' Motions to Dismiss are sustained, judgment is granted for the defendants and against the plaintiff, each party to bear their own costs.

ENTERED this 23rd day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

WARREN SPAHN, C. W. KIRBY, MICHAEL H. TREAT, LEON HARDESTY, ELBRIDGE G. KING, MICHAEL W. CHAMPION, FRED E. KANT, VINCENT MATTONE, FRANK W. CHITWOOD, RICHARD BANKER, ROGER A. MICHAEL, DANIEL LEVINE, MARVIN WILSON and TROY WILLIAMSON, Plaintiff,	)
v.	) No. 79-C-66-BT
ROSENTHAL COMMODITIES CO., a partnership, Defendant & Third Party Plaintiff,	)
v.	)
LLOYD F. SMITH, MICHAEL W. ELLINGSON, ROBERT L. HUFFMAN and GERRY A. BOYER, Defendant.	)

NOTICE OF DISMISSAL OF THIRD PARTY COMPLAINT AS TO CERTAIN DEFENDANTS

Defendant Rosenthal & Company, by and through its counsel of record, hereby dismisses, without prejudice, its third party complaint filed herein against third party defendants Gerry A. Boyer and Michael W. Ellingson.

CLINTON BURR
Clinton Burr
141 West Jackson, Suite 1025
Chicago, Illinois 60604

Robert A. Huffman, Jr.
510 Oklahoma Natural Building
Tulsa, Oklahoma 74119
(918) 585-8141

Attorneys for Defendant, Rosenthal & Company

OF COUNSEL:

HUFFMAN ARRINGTON KIHLE GABERINO & DUNN
510 Oklahoma Natural Building
Tulsa, Oklahoma 74119
(918) 585-8141

CERTIFICATE OF MAILING

I, Robert A. Huffman, Jr., hereby certify that on the 12th day of October, 1980, I mailed a true and correct copy of the above and foregoing Notice of Dismissal of Third Party Complaint as to Certain Defendants to Joe Witherspoon, 512 Mayo Building, Tulsa, Oklahoma 74102; Terry W. Tippens, Fellers, Snider, Blankenship, Bailey & Tippens, 2700 First National Center, Oklahoma City, Oklahoma 73102 with proper postage thereon.

Robert A. Huffman, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 22 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CHARLES E. RAKE,

Plaintiff,

vs.

STANDARD OIL COMPANY, a foreign corporation,

Defendant.

NO. 80-C-495-E

ORDER OF DISMISSAL

ON This 21st day of October, 1980, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

By:_____

Gus Farrar
Attorney for the Plaintiff,

_____

Richard D. Wagner
Attorney for the Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 21 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JANET L. SOULSBY, Plaintiff, v. FACTORY OUTLET SHOES OF OKLAHOMA, INC., d/b/a ABERSON'S ALLEY, Defendant.	)	NO. 80-C-492-E

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE

The plaintiff, Janet L. Soulsby, pursuant to Rule 41(a)(1)(i) Fed. R. Civ. Pro., gives notice of her dismissal with prejudice of the above-captioned case.

Janet L. Soulsby

Daniel Doris

800 Petroleum Building
420 South Boulder
Tulsa, Oklahoma 74103

Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of October, 1980, I mailed a true and correct copy of the foregoing document to attorney for defendant, J. Douglas Mann, 525 South Main Street, Suite 300, Tulsa, Oklahoma 74103, with proper postage thereon fully prepaid.

Daniel Doris

ABK:sl

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BERTHA GRISWOLD, Plaintiff,	)	
vs.	)	NO. 80-C-537-C
FURR'S CAFETERIAS, INC. Defendant.	)	

ORDER OF DISMISSAL

ON This 17 day of October, 1980, upon the written application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all cases of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

H. Dale Cook
JUDGE, U.S. NORTHERN DISTRICT

APPROVALS:

Herbert E. Elias,

Herbert E. Elias
Attorney for the Plaintiff,

Alfred B. Knight,

Alfred B. Knight
Attorney for the Defendant.

IN AND FOR THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

BERKEY MANAGEMENT COMPANY, INC., an Oklahoma corporation, Plaintiff,	)	
vs.	)	Civil Action No. 80-C-455-C
ROLLING OAKS PROPERTIES, a California limited partnership; THOMAS G. DeJONGHE, General Partner, Defendant.	)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Comes now BERKEY MANAGEMENT COMPANY, INC., an Oklahoma corporation, by and through the undersigned John William Berkey, its Chairman of the Board, and the Defendant ROLLING OAKS PROPERTIES, a California limited partnership; THOMAS G. DeJONGHE, General Partner, by and through the undersigned Thomas G. DeJonghe, and do herewith stipulate to the following:

1. That Defendant is indebted to Plaintiff in the amount of $10,440.00 pursuant to the "Consulting Agreement" attached to Plaintiff's Original Complaint as Exhibit A.

2. Defendants are entitled to a setoff of the above stated indebtedness in the amount of $5,220.00 resulting from an oral agreement between the parties relative to repair of air conditioning units at the Rolling Oaks Apartments in Midwest City , Oklahoma.

3. The Defendant agrees to pay to Plaintiff the sum of $5,220.00 in order to fully resolve this dispute.

4. In return for receipt of said $5,220.00, Plaintiff agrees to dismiss its Original Complaint in the cause without prejudice to filing any future actions relative to any future

breaches of the aforesaid "Consulting Agreement" in the event same shall occur.

5. It is agreed between the parties that each shall bear their respective costs incurred as a result of the filing of this action.

IT SO STIPULATED this 17th day of October, 1980.

Tom Tannehill
Tom Tannehill
Attorney for Plaintiff

John William Berkey
Chairman of the Board
Berkey Management Company, Inc.
"Plaintiff"

10/13/80
Thomas G. DeJonghe
General Partner
Rolling Oaks Properties
A California Limited Partnership
"Defendant"

FILED

OCT 17 19[illegible]

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
JOAN F. CLOWDUX, a/k/a JOAN F. ROBERTS, Defendant.	)	CIVIL ACTION NO. 80-C-189-E

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 17th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

FILED

OCT 17 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
JACKIE D. COMER, Defendant.	)	CIVIL ACTION NO. 80-C-405-E

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 17th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CHARLES L. BARNETT,	)	CIVIL ACTION NO. 80-C-345-C
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 16 day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Charles L. Barnett, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles L. Barnett, was personally served with Summons and Complaint on July 2, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Charles L. Barnett, for the principal sum of $500.00 plus the accrued interest of $146.05, as of March 18, 1980, plus interest at 7% from March 18, 1980 until the date of Judgment, plus interest at the legal rate on the principal sum of $500.00 from the date of Judgment until paid.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES E. ROBINSON,) CIVIL ACTION NO. 80-C-488-E
)
Defendant.)

DEFAULT JUDGMENT

This matter comes on for consideration this 16TH day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, James E. Robinson, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, James E. Robinson, was personally served with Summons and Complaint on September 8, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, James E. Robinson, for the principal sum of $1,500.00 plus the accrued interest of $198.58 as of June 21, 1980, plus interest at 7% from June 21, 1980 until the date of Judgment, plus interest at the legal rate on the principal sum of $1,500.00 from the date of Judgment until paid.

James O. Ellison
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

4

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

TULSA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. BLACK, SIVALLS & BRYSON SAFETY SYSTEMS, Defendant.	)	CIVIL ACTION NO. 79-C-392-E

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSING CAUSE WITH PREJUDICE

This matter having come on before the Court to be heard upon the Settlement Agreement executed by the parties and filed with the Court on the 15th day of October 1980, both parties appearing by their respective attorneys of record, the Court having reviewed the proposed Settlement Agreement heretofore filed in this case, and having heard the statements of Counsel, and being fully advised in the premises,

FINDS:

1. That the Court has jurisdiction of the parties hereto and the subject matter hereof pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. (Supp. II, 1972).

2. That the Settlement Agreement is fair to all parties to this action and Charging Party John L. Starkey and it should be approved in the best interests of all the said parties, and

3. That the following Order should be entered by the Court:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

1. The Court has jurisdiction of the parties and the subject matter herein.

2. The Settlement Agreement filed by the parties on the 15th day of October 1980, be, and it hereby is approved by the Court in its entirety.

3. Black, Sivalls and Bryson Safety Systems shall pay to charging Party John L. Starkey Two Thousand and No/100 ($2000.00) Dollars upon the execution by John L. Starkey of a form of Release approved by the parties.

4. Black, Sivalls and Bryson Safety Systems is hereby discharged and released of all obligations and claims made in this cause, or which could have been made in this action and which relate to the facts, transactions and occurrences which are the subject matter of the Starkey claim.

5. This cause be, and it hereby is dismissed with prejudice.

Signed and Entered this 16th day of October 1980.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED FOR DEFENDANT:

BLACK, SIVALLS AND BRYSON
SAFETY SYSTEMS

BY: _____
J. PATRICK CREMIN
Hall, Estill, Hardwick, Gable,
Collingsworth & Nelson
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

PLAINTIFF:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

LEROY CLARK
General Counsel

_____
JAMES N. FINNEY
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
2401 E Street, N.W.
Washington, D.C. 20506

_____
ROBERT M. JONES
Regional Attorney

_____
MARY M. DUNLAP
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
212 N. St. Paul St., 13th Floor
Dallas, Texas 75201

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES E. AMOS, Defendant.	)	CIVIL ACTION NO. 79-C-424-E

DEFAULT JUDGMENT

This matter comes on for consideration this 16th day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Charles E. Amos, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles E. Amos, was personally served with Summons and Complaint on January 16, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Charles E. Amos, for the principal sum of $612.00 (less $100.00 which has been paid) plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE
NORTHERN DISTRICT OF THE STATE OF OKLAHOMA

WILLIAM PRUSKOWSKI, BRENDA PRUSKOWSKI and MICHELLE PRUSKOWSKI, Plaintiffs, vs. JOHN R. GILMORE, JOHN W. "WOODIE" GILMORE and EVELYN ANN GILMORE, d/b/a C & G FEED AND SUPPLY, a co-partnership, and RICKY RANDEL YOUNT, Defendants, vs. PACCAR, INC., and BENDIX CORPORATION, Third Party Defendants, vs. WIETHOP TRUCK AND TRAILER, Third Party Defendant.	)	No. 79-C-488-E

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON THIS 16th day of October, 1980, upon written application of the parties for a Dismissal With Prejudice of the complaints and Third Party Complaints herein and all causes of action, the Court having examined said application, finds that said parties have entered into a compromised settlement covering all claims involved in the Complaint and Third Party Complaints and have requested the Court to dismiss said Complaint and all Third Party Complaints with prejudice to any future action. The Court further finds that a total sum of ONE HUNDRED, FORTY-EIGHT THOUSAND AND 00/100 DOLLARS ($148,000.00) is being paid to the Plaintiffs for medical expenses incurred and any and all other claims of said Plaintiffs, and for and on behalf of Michelle Pruskowski, a minor.

The Court further finds that ONE THOUSAND AND 00/100 DOLLARS ($1,000.00) of the above settlement is to be awarded for the sole use and exclusive benefit of said minor, Michelle Pruskowski and in accordance with the laws of Oklahoma, more particularly, 12 O.S., §83, that there is no need that said monies be placed in trust for said minor but that said monies are to be available for her use and benefit immediately.

The Court further finds that said settlement is in the best interest of said minor and that said Complaint and all Third Party Complaints should be dismissed with prejudice pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that ONE THOUSAND AND 00/100 DOLLARS ($1,000.00) of the above sum be and the same hereby is awarded to Michelle Pruskowski, a minor, for her sole use and benefit and pursuant to 12 O.S., §83, there is no need to put said funds in trust for said minor.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complaint, Third Party Complaints and any and all other causes of action of the Plaintiffs or any other parties to this action filed herein be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVALS AS TO FORM:

GARRISON & COMSTOCK, INC.

Paul E. Garrison, attorney for the Plaintiffs

KNIGHT, WAGNER, STUART & WILKERSON

Stephen C. Wilkerson, attorney for the Defendants

CONNER, WINTERS, BALLAINE, BARRY & McGOWEN

Keith P. Ellison, attorney for the Third Party Defendant Paccar

BEST, SHARP, THOMAS & GLASS

Joseph A. Sharp, attorney for the Third Party Defendant, Wiethop

Dan A. Rogers, attorney for the Third Party Defendant, Bendix

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 79-C-469-Bt
GINGER L. ARCHER, Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 16 day of oct., 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

Paula S. Ogg

PAULA S. OGG
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 15 1980

JOHN D. WILLIAMS, PLAINTIFF,	)	
-vs-	)	NO. 80-C-266-E
NORMAN C. BLANKINSHIP, DEFENDANT.	)	

STIPULATION

It is hereby stipulated by John D. Williams, Plaintiff herein, and Norman C. Blankinship, Defendant herein, that the above entitled action be compromised and settled by dismissal of this action with prejudice by the Plaintiff and the payment by the Defendant to the Plaintiff of the sum of $26,005.50, payable $20,605.50 upon the dismissal of the action and the delivery at the same time of a promissory note by Defendant to Plaintiff for $5,400.00 payable in twelve (12) monthly installments of $450.00 each beginning October 1, 1980, without interest, a copy of which is attached hereto and made a part of this Stipulation. The parties further agree that upon the dismissal of this action and payment of said amounts and delivery of said note, the Lease Agreement dated June 15, 1978 is mutually cancelled and both parties released therefrom.

JOHN D. WILLIAMS, Plaintiff

CARLE, TANNER, LOLLMAN & HIGGINS and
GABLE, GOTWALS, RUBIN, FOX, JOHNSON
& BAKER, Attorneys for Plaintiff

BY: _____

NORMAN C. BLANKINSHIP, Defendant

ROSENSTEIN, FIST & RINGOLD

BY: _____
Attorney for Defendant

ORDER OF DISMISSAL

It appears to the Court that the above cause has been fully settled, adjusted and compromised based on the above Stipulation of the parties.

IT IS THEREFORE ORDERED that the above entitled case be, and hereby is, dismissed without cost to either party and with prejudice to the Plaintiff.

DATED THIS 16TH day of October, 1980.

James O. Ellison

JAMES O. ELLISON
U. S. District Judge

PROMISSORY NOTE

$5,400.00 Claremore, Oklahoma, September ____, 1980.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of JOHN D. WILLIAMS the principal sum of Five Thousand Four Hundred Dollars ($5,400.00) without interest, payable in monthly installments of Four Hundred Fifty Dollars ($450.00) each, with the first installment due October 1, 1980, and succeeding installments due on the 1st day of each and every month thereafter until the entire principal sum is paid. Payments shall be made at Claremore, Oklahoma, or at such other place as the holder hereof may designate in writing, in lawful money of the United States of America.

If any installment is not paid when due, the holder may, without notice to any party, declare all of the indebtedness evidenced hereby to be immediately due and payable. Any installments not paid when due shall bear interest at the maximum permissible interest rate.

If default is made in the payment of the indebtedness evidenced hereby and this note is placed in the hands of an attorney for collection, the parties severally agree to pay, in addition to principal and interest, if any, a reasonable attorney's fee. The maker hereby agreed that if any suit is brought on this promissory note, it may be brought in the District Court of Rogers County, Oklahoma, and the maker hereby waives any objection to the jurisdiction of said Court and hereby appoints Mr. Gene L. Mortensen, Esquire, Tulsa, Oklahoma, as service agent in any such suit.

NORMAN C. BLANKINSHIP

L-5468

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY L. IRWIN, Plaintiff,	)	
vs.	)	Case No. 79-C-556-E
MODERN AMERICAN LIFE INSURANCE COMPANY, Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the attorneys for Roy L. Irwin and Modern American Life Insurance Company, and stipulate that the above-captioned case can be dismissed with prejudice.

Joseph G. Breaune, Attorney for Plaintiff

Joseph F. Glass, Attorney for Defendant

FILED

OCT 16 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

And now on this 16th day of October, 1980, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

Judge James O. Ellison

kg

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America, Plaintiff, vs. 1.87 Acres of Land, More or Less, Situate in Washington County, State of Oklahoma, Trustees of Jackson-Falleaf Cemetery Association, and Unknown Owners, Defendants.	)	CIVIL ACTION NO. 79-C-440-BT TRACT NO. 325C

FILED
1 1980

J U D G M E N T

1.

NOW, on this 10th day of October, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a contract, wherein the parties have agreed upon the amount of just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 325C, as such estate and tract are described in the Complaint filed in this action.

3.

This Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in Paragraph 2 of the Complaint herein give the United States of America the right,

power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on June 25, 1979, the United States of America filed its Complaint seeking to condemn such described property, and title to the described estate in such property should be vested in the United States of America.

6.

The Trustees of Jackson-Falleaf Cemetery Association are the only defendants asserting any interest in subject property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the real property involved and, as such, are entitled to receive the monetary just compensation awarded by this judgment.

7.

Before this case was filed the Plaintiff and the owners of subject land executed a contract entitled "Offer to Sell Real Property", (designated by the Plaintiff as Option No. DA RE-79-31), whereby the parties agreed, among other things that in the event of condemnation of the subject tract, the sum of $2,250.00, inclusive of interest, should be the full amount of the award of just compensation, for such taking.

The parties to such contract further agreed that payment of such sum would not be made until such time as any and all bodies buried on subject tract had been removed and reinterred in another burial site or sites.

The said contract should be approved.

8.

A new grave site for the relocation of one known grave, located upon the subject tract, has been acquired, and any body or last remains buried in the grave located on subject tract has been disinterred, removed, and reinterred in said new grave site in accord with the relocation plan set forth in Exhibit "E" attached to the Complaint filed herein. The expense of such site acquisition and grave relocation has been paid by Plaintiff.

9.

On January 14, 1980 there was deposited in the registry of this Court the sum of money agreed upon, as just compensation, in the contract described above in Paragraph 7. All of such deposit has been disbursed, as shown below in Paragraph 13.

10.

It is, therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 325C, as such tract is particularly described in the Complaint filed herein; and such tract, to the extent of the estate described in such Complaint, is condemned; and title thereto is vested in the United States of America, as of the date of filing this Judgment, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tract were the defendants whose names appear below in paragraph 13; and the right to receive the just compensation for the estate taken herein in such tract is vested in the parties so named.

12.

It is further ORDERED, ADJUDGED and DECREED that any and all burial or visitation rights which may have existed in connection with the grave formerly located on subject tract have been extinguished by the removal and relocation of such grave.

Such relocation of the grave and the last remains buried therein, in a reinterment site, in accordance with the relocation plan set forth in Exhibit "E" attached to the Complaint filed herein, at Plaintiff's expense, constitutes just compensation for the extinguishment of such burial or visitation rights.

It is further ORDERED, ADJUDGED and DECREED that the "Offer to Sell Real Property" described above in Paragraph 7 hereby is confirmed; and the sum thereby fixed by the parties is adopted as the total award of monetary just compensation for the estate condemned by this action, as follows:

TRACT NO. 325C

OWNERS:

The Trustees of Jackson-Falleaf Cemetery Association, owned fee simple title, subject to burial and visitation rights owned by the unknown heirs or next of kin of W. F. McMiden, deceased, who apparently was buried in grave No. 85, located on subject tract.

AWARD of monetary just compensation, pursuant to option contract -	$2,250.00	$2,250.00
DEPOSITED as estimated monetary compensation-	$2,250.00	
DISBURSED to The Trustees of Jackson-Falleaf Cemetery Association -		$2,250.00

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

Hubert A. Marlow
HUBERT A. MARLOW
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN F. BOHMFALK, JACK HEATH, DAVID PLOST and R. A. WILLIS, Plaintiffs,	)	
vs.	)	No. 80-C-16-BT
MAURICE E. GRAHAM, JACK McCLURE and MAURICE E. GRAHAM, LTD., Defendants.	)	

FILED

OCT 15 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law entered in this cause on the 15th day of October, 1980, judgment is hereby entered in favor of plaintiffs and against defendants in the amount of $915,256.31 actual damages, $10,000.00 punitive damages, together with a reasonable attorney's fee of $4,050.00, plus interest at the rate of 12% per annum from the date of judgment, and costs.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN F. BOHMFALK, JACK HEATH, DAVID PLOST and R. A. WILLIS, Plaintiffs,	)	
vs.	)	No. 80-C-16-BT
MAURICE E. GRAHAM, JACK McCLURE and MAURICE E. GRAHAM, LTD., Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard on July 24, 1980, pursuant to the Judgment by Default and Order for Hearing entered by this Court on June 30, 1980. The Court in reaching the determination herein has considered the evidence produced at the hearing and the allegations of Plaintiffs in their Complaint. Upon the entire record, the Court makes the following:

FINDINGS OF FACT

1. Plaintiffs are citizens of the State of Oklahoma and were the owners of the issued and outstanding common stock of Bohmar Mining Corporation ("Bohmar").

2. Defendant Maurice E. Graham is a resident of Pineville, North Carolina.

3. Defendant Jack McClure is a resident of Fort Smith, Arkansas.

4. Defendant Maurice E. Graham Ltd. ("Limited") is a purported business organization of unknown type not registered to do business in the State of Oklahoma as a corporation or limited partnership. Limited is the alter-ego of Defendants Graham and McClure and was created by Defendants Graham and McClure in connection with and to effectuate the purchase of the issued and outstanding common stock of Bohmar.

5. Jurisdiction of this Court is invoked by 28 U.S.C. §§1331 and 1332 and Section 27 of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78aa).

6. Defendant McClure was personally served with process in accordance with the Federal Rules of Civil Procedure on January 15, 1980.

7. Defendant Graham and Limited were personally served with process in accordance with the Federal Rules of Civil Procedure on January 17, 1980.

8. The Defendants have failed and refused to answer or further plead to the Complaint herein and were in default at the time the Judgment of Default and Order for Hearing was entered in this cause.

9. Plaintiffs and Defendants were parties to an agreement executed by the parties on November 8, 1979, by which Plaintiffs agreed to sell all of the issued and outstanding common stock of Bohmar to the Defendant (hereinafter "the Agreement").

10. Paragraph 1 of the Agreement provided that the Defendants were to assume certain liabilities of Bohmar consisting of accounts and notes payable.

11. By paragraph 2 of the Agreement the Defendants agreed to secure the release of Plaintiffs as guarantors of a note made by Bohmar dated July 16, 1979, payable to the Community National Bank of Tulsa, Oklahoma, in the amount of $100,000.

12. Paragraph 3 of the Agreement required that Defendants pay to Plaintiffs a royalty of $1.00 per ton for coal mined from a certain 3100 acre tract subleased by Bohmar in Scott County, Arkansas ("the sublease") and an additional $1.00 per ton royalty for all coal of metallurgical quality mined from the subleases.

13. By Paragraph 4 of the Agreement, Defendants agreed to pay Plaintiff Bohmfalk an advance royalty of $15,000 payable

for three months after the execution of the Agreement at $5,000 per month.

14. Plaintiffs assigned the Bohmar stock to Defendants and turned over the books and records on or about November 8, 1979.

15. Prior to the execution of the Agreement, Plaintiffs caused an independent evaluation of the coal reserves underlying an 110 acre portion of the sublease. The evaluation reported possible reserves of metallurgical quality of 276,400 tons. Plaintiffs reasonably estimated coal reserves in excess of 3 million tons on the entire 3100 acre tract.

16. Defendants Graham and McClure represented to Plaintiffs prior to the execution of the Agreement that they were owners of mining equipment and possessed the capability of mining 25,000 tons of coal per month from the sublease for a period in excess of ten years.

17. At the time of closing Bohmar had assets of $68,136.29, consisting of inventories, prepaid insurance, and equipment, excluding the mining lease.

18. At or about the time of closing Bohmar had accounts and notes payable of $28,089.97.

19. The present value of the royalty interest retained by the Plaintiffs pursuant to the Agreement is $715,930.05.

20. In connection with the purchase of the common stock of Bohmar from Plaintiffs, Defendants, by the use and means of instrumentalities of interstate commerce and the mails, directly or indirectly, knowingly and with intent to deceive, obtained the money and property by means of untrue statements of material facts and failed to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

21. In the course of purchasing the Bohmar common stock from Plaintiffs, Defendants, knowingly, willfully and with intent to deceive made certain statements and representations of material facts which were untrue, including, not not limited to the following:

(a) That Defendants would cause Bohmar to continue coal mining operations;

(b) That Defendants were financially able to fulfill the obligations imposed on them by the Agreement and to continue coal mining operations on the sublease;

(c) That Defendant Graham was a controlling shareholder of a publicly-held company which Graham would cause to lend its support to the coal mining operation;

(d) That Bohmar would pay royalties to Plaintiff for coal produced from the tract; and

(e) That Defendants would pay Plaintiff Bohmfalk an advance royalty of $15,000.

22. Defendants further omitted to state the following facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including:

(a) That Limited is without assets and was contrived solely for the convenience of Graham and McClure in the purchase of the Bohmar stock;

(b) That Defendants were incapable or unwilling to continue mining operations on the sublease;

(c) That Defendants' purchase of the Bohmar stock was for the purpose of dissipating its assets to the detriment of Bohmar and Plaintiffs.

23. Defendants have not assumed or paid the accounts payable pursuant to the assumption requirement of the Agreement.

24. The assets of Bohmar have been dissipated and have no present value. No coal mining operations have been commenced by Bohmar on the sublease.

25. Defendants did not secure the release of Plaintiffs from their guaranties on the Community National Bank note. Community National Bank called the original note and required Plaintiffs to perform on their guaranties. Plaintiffs jointly and severally issued a note in the amount of $103,100 to the Community National Bank in satisfaction of their guaranties on the original note and are currently paying principal and interest thereon.

26. Plaintiff Bohmfalk has received $1,000 of a $15,000 advance royalty he was entitled to receive pursuant to the Agreement, but the balance is unpaid.

27. Plaintiffs have incurred attorneys' fees in the amount of $3,050 in connection with this cause, representing 58.5 hours of attorney time expended at the hourly rate of $60 per hour.

CONCLUSIONS OF LAW

28. This Court has jurisdiction over the parties and the subject matter of this action based on 28 U.S.C. §1331 and 1332 and §27 of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78aa).

29. The allegations of Plaintiffs in the Complaint are uncontroverted and, except to those allegations pertaining to the amount of damages sustained, are admitted by the Defendants failure to deny. Rule 8(d) of the Federal Rules of Civil Procedure.

30. Defendants have violated Section 10b of the Securities Exchange Act of 1934 (15 U.S.C. §78(j)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5) in connection with the purchase and sale of the common stock of Bohmar. Also in connection with the purchase and sale of the common stock of Bohmar the Defendants have been guilty of common law fraud under the applicable standard in Oklahoma. Singleton v. LePak, 425 P.2d 974 (Okl. 1967).

31. The Defendants, by their refusal to perform, have breached the Agreement and are liable to Plaintiffs for damages caused thereby.

32. The Courts in considering actions based on violations of 10b-5 should fashion remedies best suited to the harm. Nye v. Blyth, Eastman, Dillon and Co., Inc., 588 F.2d 1189 (8th Cir. 1978).

33. The remedy of damages or rescission and restitution may be appropriate remedies for violations of 10b-5. Myzel v. Fields, 386 F.2d 718 (8th Cir. 1967) cert. denied, 390 U.S. 951.

34. Plaintiffs have elected to pursue their remedy of damages rather than the remedy of rescission and restitution.

35. Where the defrauded party is a buyer the ordinary measure of damages in actions alleging violations of 10b-5 is the value of consideration given versus the value of the security received. Foster v. Financial Technology,Inc., 517 F.2d 1068 (9th Cir. 1975). Where the defrauded party is the seller of a security, the party may recover damages equal to the difference between the fair value of all the seller received and the fair value of what he would have received had there been no fraud. Affiliated Ute Citizens of the State of Utah v. U.S., 406 U.S. 128 (1972). In addition, a party may recover consequential damages where it can be proven with reasonable certainty that such damages were caused by Defendants' 10b-5 violations. Foster v. Financial Technology, Inc., 517 F.2d 1068 (9th Cir. 1975); Zeller v. Bogue Electric Manufacturing Corp., 476 F.2d 795 (2nd Cir. 1973) cert. denied, 414 U.S. 908.

36. In determining the value that would have been received by Plaintiffs absent fraud by the Defendants, the value calculated by the parties in the Agreement as adduced from the evidence is the appropriate measure of Plaintiffs' damages.

37. Plaintiffs' damages so calculated should include the value of assets of Bohmar at November 8, 1979 in the amount of $68,136.29; the value of the accounts and notes payable that were to be assumed by the Defendants in the amount of $28,089.97; the face value of the Community National Bank note given in satisfaction of Plaintiffs' guaranties in the amount of $103,100; and the present value of the royalty interests retained by the Plaintiffs in the amount of $715,930.05, arrived at as follows:

10,000 tons per month (realistic mining program) x 120 months =	1,200,000 tons
1,200,000 tons x $1.29 per ton =	$1,548,000.00
$1,548,000.00 ÷ 120 months =	$12,900.00 per month
$12,900/month x 55.498454 (present value annuity factor) =	$715,930.05

Affiliated Ute Citizens of the State of Utah v. U.S., 406 U.S. 128 (1972). The $14,000 advance royalty payment still unpaid is included in the total royalty figure.

38. Where state law provides for punitive damages in a pendent state law claim, they may be awarded in a 10b-5 action. Nye v. Blyth, Eastman, Dillon & Co., Inc., 588 F.2d 1189 (8th Cir. 1978). In Oklahoma, punitive damages are recoverable in actions for fraud. Bridges v. Youree, 436 F.Supp. 458 (W.D. Okl. 1977).

39. Punitive damages may be awarded in a default judgment where justified by the evidence. Peitzman v. City of Illmo, 141 F.2d 956 (8th Cir. 1944) cert. denied, 323 U.S. 718.

40. Punitive damages in the sum of $10,000.00 against the defendants are appropriate.

41. Plaintiffs should be awarded attorneys' fees in the amount of $4,050, representing the value of the actual time expended by Plaintiffs' attorneys and an incentive fee of $1,000. Such fee is reasonable in view of the time and labor expended, the skills demonstrated and experience of the attorneys involved; the customary fee for matters of this kind and the amount of issue and results obtained.

42. A judgment in keeping with the Findings of Fact and Conclusions of Law expressed herein plus interest, attorneys fees and costs should be entered.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TERESA LUYSTER, Plaintiff, -vs- BANKERS LIFE AND CASUALTY COMPANY, an Illinois corporation, Defendant.	)	No. 80-C-13-E

ORDER OF DISMISSAL

On this 15th day of Oct., 1980, upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said complaint should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any further action.

S/ JAMES O. ELLISON

James O. Ellison
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 15 1980

KIM ALANE MARTIN,

Plaintiff,

-vs-

FARMERS INSURANCE COMPANY, INC., a foreign insurance corporation,

Defendant,

-vs-

CARL BEARPAW,

Defendant.

NO. 79-C-574-E

ORDER

ON this 15TH day of October, 1980, the Application of Farmers Insurance Company, Inc., to dismiss its Cross-Petition against Carl Bearpaw came before the Court for hearing. The Court finds that said Application should be granted and the Cross-Petition of Farmers Insurance Company, Inc., against Carl Bearpaw is hereby dismissed without prejudice.

James O. Ellison

JUDGE OF THE UNITED STATES DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

14

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN B. JARBOE, Trustee in Bankruptcy of the Estate of NORMA JUNE REDDING, Bankrupt No. 75-B-950,	)	
Plaintiff,	)	
vs.	)	No. 75-C-575-B
STATE FARM INSURANCE COMPANY, a corporation,	)	
Defendant.	)	

J U D G M E N T

Based on the Order filed simultaneously with this Judgment,

IT IS ORDERED Judgment be entered in favor of the defendant, State Farm Insurance Company, and against the plaintiff, John B. Jarboe, Trustee in Bankruptcy of the Estate of Norma June Redding, Bankrupt, with each party to bear its own costs.

ENTERED this 15th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN B. JARBOE, Trustee in Bankruptcy of the Estate of NORMA JUNE REDDING, Bankrupt No. 75-B-950,

Plaintiff,

vs.

STATE FARM INSURANCE COMPANY, a corporation,

Defendant.

No. 75-C-575-B

O R D E R

Norma June Redding and Myrtle Broyles were involved in a vehicular accident which occurred on April 23, 1968, and as a result Myrtle Broyles instituted an action on April 23, 1970, against Norma June Redding for damages in the amount of $55,000.00. At the time of the accident Norma June Redding had a policy of automobile liability insurance with State Farm Insurance Company with limits of 10/20/10. State Farm Insurance Company retained the law firm of Best, Sharp, Thomas & Glass and Joseph F. Glass to defend Norma June Redding in the litigation. An offer was made by Myrtle Broyles to settle within the policy limits and this offer was rejected. The case proceeded to a trial by jury and a judgment was rendered on May 27, 1971 in favor of Myrtle Broyles and against Norma June Redding in the amount of $55,000.00. An appeal to the Oklahoma Supreme Court resulted in a judgment affirmance on March 29, 1973. State Farm Insurance Company paid Myrtle Broyles $10,106.98, representing the full amount of its policy coverage together with accrued interest. Proceedings to execute on the excess judgment against Norma June Redding were instituted, and as a result Norma June Redding commenced bankruptcy proceedings in the Northern District of Oklahoma, Case No. 75-B-950, on August 15, 1975, listing the personal injury judgment in favor of Myrtle Broyles as a debt against the bankrupt. The present action was commenced by John Jarboe, Trustee in Bankruptcy of the Estate of Norma June Redding, against State Farm Insurance Company on December 8, 1975.

Although plaintiff Trustee originally alleged as one of the grounds for the cause of action State Farm's refusal to settle within the policy limits, by amendment to his complaint filed April 4, 1978, plaintiff specifically deleted from his cause of action any claim for bad faith for negligent failure to settle within policy limits.

Plaintiff's complaint now rests upon one theory: State Farm is liable for the excess judgment because counsel provided by State Farm introduced "immaterial, highly prejudicial evidence at trial, without first advising the bankrupt of the possibility that an adverse effect might result and the consequences thereof."

Defendant has filed a Motion for Summary Judgment alleging plaintiff's cause of action is barred by the applicable two year period of limitations, 12 O.S. §95 (Third).

Defendant contends this is a tort action on the part of plaintiff for the negligence of defense counsel in the actual trial of the original case. It is defendant's position plaintiff seeks to hold State Farm, as principal, liable for the negligence of attorney Joe Glass. Defendant further contends this cannot be a contract claim because the full amount of the contract coverage was tendered and paid to plaintiff after trial.

Plaintiff, in opposition to the Motion for Summary Judgment, contends the defendant's duty to "exercise due diligence and intelligence" in conducting the defense of Norma June Redding was not imposed by general rule but arose from the contract of insurance with Norma June Redding. Plaintiff argues the mere fact that the breach of duty has its basis on negligent conduct of defendant's alleged agent, servant and employee does not transform the breach of contract to an action for injury to the rights of another, not arising on contract.

At the bottom of page 5 of plaintiff's brief, it is stated:

> "Obviously, any cause of action against attorney Joe Glass was barred by the time Norma June Redding filed her action in bankruptcy since Mr. Glass had no contract with the insured. However, this fact does not relieve defendant State Farm of liability since its duty to Mrs. Redding was one arising out of contract."

The policy of insurance issued to Norma Redding provides:

> ".... and to defend, with attorneys, selected by and compensated by the company, any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable hereunder even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient."

It is an established rule in Oklahoma that the right of an insurer to control litigation under public liability policies, ".... [c]arries with it the correlative duty to exercise diligence, intelligence, good faith, honest and conscientious fidelity to the common interest of the parties." Moore v. United States Fidelity & Guaranty Company, 325 F.2d 972, 974 (10th Cir. 1963); Traders & General Ins. Co. v. Rudco Oil & Gas Co., 129 F.2d 621, 627 (10th Cir. 1942); 34 ALR3d 533, 546.

The law is unsettled in Oklahoma where there has been a tortious breach of contract [a breach of contract which is permeated with tort]. Actions: Tortious Breach of Contract, A Plaintiff's Dilemma, 26 Okl.L.Rev. 249.

Initially, in Hobbs v. Smith, 27 Okl. 830, 115 P. 347 (Okl. 1911) the Oklahoma Supreme Court recognized the right of a plaintiff, when a breach of contract was permeated with tort, to elect whether to proceed in contract or in tort. The Court said:

> "[W]here a breach of contract is permeated with tort, the injured person may elect to waive the contract and recover in tort; or differently stated, although the relation between the parties may have been established by contract, express or implied, if the law imposes certain duties because of the existence of that relation, the contract obligation may be waived, and an action in tort maintained...."

The Hobbs v. Smith rule was followed in Chicago, R.I. & P. Ry.Co. v. Harrington, 143 P. 325, 326 (Okl.1914); Oklahoma Natural Gas Co. v. Pack, 97 P.2d 768 (Okl. 1939).

However, in 1926, the Oklahoma Supreme Court decided the case of Jackson v. Central Torpedo Co., 246 P. 426 (Okl. 1926), ignoring but not overruling the Hobbs v. Smith decision and stated:

> "If the transaction complained of had its origin in a contract which placed the parties in such a relation that, in attempting to perform the promised service, the tort was committed, then the breach of the contract is not the gravamen of the suit. The contract in such case is mere inducement, creating the state of things which furnishes the occasion of the tort...."

The Jackson v. Central Torpedo Co., rationale was followed in Seanor v. Browne, 7 P.2d 627 (Okl. 1932); Independent Torpedo Co. v. Carder, 25 P.2d 62 (Okl. 1933); and Cossey v. St. Anthony Hospital, 43 Okl. B.A.J. 2481 (Ct. App.), cert. denied, 44 Okl. B.A.J.6 (1973).

In Hall Jones Oil Corp. v. Claro, 459 P.2d 858, 861-862 (Okl. 1969), in one paragraph of the opinion the Court stated the rule that such action must be brought in tort and cited Jackson v. Central Torpedo Co., as authority. In the next sentence, the Court reiterated the rule that the plaintiff may elect to sue in tort and listed the Hobbs v. Smith rule. In Hall Jones Oil Corp., the plaintiff brought his action in tort and there appeared to be no problem of conflict for the Court between the rules stated in the Jackson v. Central Torpedo case and the Hobbs v. Smith case. The same procedure was followed in Morriss v. Barton, 190 P.2d 451, 457 (Okl. 1948).

The conflicting tortious breach of contract rules were not considered by the Oklahoma Court of Appeals in two recent cases involving the question of bad faith failure to settle a personal injury action against the insured.

In Cue v. Casualty Corporation of America, 537 P.2d 349 (Okl.App. 1975) [Released for Publication by Order of the Court of Appeals June 19, 1975], a judgment creditor brought a direct action against an insurance carrier to recover a judgment in excess of the policy limits, after the insurance carrier paid the policy limits. The Court of Appeals characterized the claim as not for "insurance afforded by the policy which is sought, but rather damages for the tortious failure of the insurer to act carefully and in good faith." At page 351 the Court of Appeals said:

"The Appleman citation [8 Appleman, Insurance Law and Practice, Sec. 4831] supports the Day decision. In the section cited this statement appears:

> 'An injured third party who has recovered a judgment against the insured generally has been held to be subrogated to the rights of the latter and he can maintain an action directly against the liability insurer.'

"Before we apply the rule to our case, however, we observe a cautionary note sounded by Judge Rodney in Chittick v. State Farm Mutual Automobile Ins. Company, (D.Del.) 170 F.Supp. 276, wherein the court in discussing the Appleman citation says, at page 280,

> 'The generality of this statement may be somewhat misleading. If it is confined to a liability within the monetary limits of the policy then, perhaps, the statement may be fully accepted. A careful inspection of the sustaining cases does not disclose any which involved a claim for an amount exceeding the limits of the policy and based upon a tort committed by the insurer and involving a personal duty owed to the insured by the insurer.'

"In Chittick the injured creditor claimed to be a subrogee of the insured tort feasor. The court pointed out that the liability insurance carrier may have a contractual duty within the monetary limits of the policy, but the liability from its handling of the claim negligently or in bad faith is not contractual, but tortious...."

In Tyson v. Casualty Corp. of America, Inc., 560 P.2d 238 (Okl.App. 1976) [Released for Publication by Order of Court of Appeals March 3, 1977], an insured brought an action against his insurer charging bad faith to settle a personal injury action against the insured. The Court of Appeals held that the action sounded in tort and was subject to the two-year statute of limitations applicable to tort actions and not the five year statute applicable to contract actions. At page 239 the Court of Appeals said:

> "The tort characterization was used by the Oklahoma Supreme Court in determining the effect of an action of this nature. In Fidelity & Casualty Co. of New York v. Southall, 435 P.2d 119 (Okl. 1967) the injured party garnished Fidelity, which was the insured's excess insuror. Fidelity asserted as a defense, that its insured had instituted an action against his primary insuror for failure to settle within the limits of the policy. The Court held that this was no defense because the insured's action was to recover an unliquidated tort claim. The Oklahoma Court of Appeals followed this decision in denying a right of action against the insured-tortfeasor's insurer, characterizing the action as being in tort. Cue v. Casualty Corporation of America, 537 P.2d 349 (Okl. Ct. App. 1975)."

This Court is persuaded the proper characterization of plaintiff's cause of action sounds in tort. Although couched in contract terms, plaintiff's cause of action is in reality a tort action for tortious breach of contract and is barred by the Oklahoma two-year period of limitations.[1/]

Additionally, the Court seriously questions that plaintiff has stated a cause of action, even considering the allegations and undisputed evidence in a light most favorable to the plaintiff.

Plaintiff's action is based on the theory State Farm is liable for attorney Glass' alleged ill-conceived interrogation strategy in the defense of the personal injury claim against Mrs. Redding. In the complaint filed in this action the allegation states:

> "During the trial, the bankrupt's counsel, who was the agent, servant and employee of the defendant, STATE FARM INSURANCE COMPANY, took a gamble and lost. He introduced evidence of Myrtle Broyles' pending divorce action and the financial worth of Mr. and Mrs. Broyles. The strategy backfired, and the evidence showed Mrs. Broyles' injuries were the cause of the impending divorce. Such strategy was reckless and in total disregard of the bankrupt's interests and exposure to liability...."

On cross-examination attorney Glass inquired into the assets accumulated by Mr. and Mrs. Broyles during coverture and allegations in a cross-petition filed by Mrs. Broyles in a pending divorce action. Therein it was alleged her husband had threatened physical harm for a long period of time because she wouldn't enter into an agreed divorce. On re-direct, Mrs. Broyles testified she had no marital difficulties prior to her injury in the accident

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1/ The parties have stipulated to the following dates:

April 23, 1968--date of underlying automobile accident;
April 23, 1970--date of filing of personal injury suit;
May 26-27,1971--dates of personal injury trial;
May 27, 1971--date of personal injury verdict;
March 29, 1973--date of personal injury mandate after verdict affirmed;
August 15,1975--date Norma J. Redding filed her Petition in Bankruptcy, listing said personal injury judgment as a debt to be discharged;
December 8,1975-date suit filed herein.

and thereafter she had become irritable, tired, and nervous thus precipitating her domestic dispute.[2/]

There is no claim in this case the attorney employed by State Farm was incompetent.[3/]

An attorney is not answerable for a mistake or error of judgment in the conduct of a case. 7 Am.Jur.2d §202, Attorneys at Law. An informed judgment, even if subsequently proved to be erroneous, is not negligence. Mazer v. Security Insurance Group, 368 F.Supp. 418, 422 (USDC ED Pa. 1973), aff'd on other grounds, 507 F.2d 1338 (3rd Cir. 1975); Merritt v. Reserve Insurance Company, 110 Cal. Rptr. 511, 34 Cal. App.3d 858 (1973); Burnham v. Commercial Casualty Ins. Co., 117 P.2d 644 (Calif.1941).

In every case a lawyer loses it is possible in retrospect to say that some different strategy or procedure might have brought about a better result. cf. Opie v. Meacham, 419 F.2d 465 (10th Cir. 1969), cert. denied, 399 U.S. 927 (1970); Noland v. Alford, No. 79-1900, 10th Cir. Oct. 7, 1980.

If the facts show only a mistake of judgment, from hindsight rather than from foresight, the insurer will not be held liable. 7C Appleman, Insurance Law and Practice, §4787; cf. Smith v. St. Paul Fire & Marine Insurance Company, 366 F.Supp. 1283 (USDC MD La. 1973), aff'd 500 F.2d 1131 (5th Cir. 1974).

Plaintiff's complaint is based on speculation and conjecture that counsel's inquiry into the pending divorce action caused the excessive jury verdict. To support this contention, plaintiff would have to delve into the mental processes of the jury, which is not permitted. 12 O.S. (1980 Supp.) §2606(B).

2/ The Magistrate, in Findings and Recommendations submitted on a prior Motion for Summary Judgment, attached a copy of excerpts from the trial in State Court of the cross-examination, re-direct and re-cross examination of Mrs. Myrtle Broyles. [pages 158-165]

3/ The Court takes judicial notice of the fact the particular lawyer involved has been one of the leading insurance defense counsel in Eastern Oklahoma for many years.

IT IS, THEREFORE, ORDERED defendant's Motion for Summary Judgment is sustained and Judgment will be entered in favor of the defendant and against the plaintiff, it being the opinion of the Court plaintiff's action, if in fact plaintiff has stated a claim, is barred by the two-year statute of limitations.

ENTERED this 15 day of October, 1980.

Thomas R. Brett

THOMAS R.BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OCT 15 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 80-C-217-C
DALE F. McALLISTER, Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 15 day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MADELINE CONNOR,

Plaintiff,

vs.

CHRYSLER CREDIT CORPORATION, a Delaware Corporation,

Defendant.

No. 80-C-1-C

FILED

OCT 1 0 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

Now on this 3rd day of September, 1980, the above-styled matter coming on before me pursuant to regular notice and setting of non-jury trial; the plaintiff being present and represented by her attorney of record, Paul F. McTighe, Jr. and the defendant being present and represented by its attorney of record, Bruce Jones, and the Court after having heard witnesses and being fully advised in the premises does hereby find as follows:

That plaintiff is entitled to judgment against the defendant for the sums of $754.24 actual damages; $210.00 actual damages plus interest at the rate of 6% per annum from October 17, 1979 until date of Judgment and 12% per annum thereafter until paid in full and the further sum of $2,000.00 punitive and/or exemplary damages plus interest at the rate of 12% per annum thereafter until paid in full.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff is granted judgment against the defendant, Chrysler Credit Corporation, a Delaware Corporation for the sum of $964.24 actual damages plus interest thereon at the rate of 6% per annum from October 17, 1979 until date of Judgment and 12% per annum thereafter until paid in full; plus the reasonable sum of $2,000.00 punitive and/or exemplary damages plus interest thereon at the rate of 12% per annum from the date of judgment until paid in full and the costs of this action upon a proper application to tax said costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that plaintiff is awarded judgment against the defendant on the defendant's counterclaim.

(Signed) H. Dale Cook

JUDGE

APPROVED AS TO FORM:

Paul F. McTighe, Jr.
Attorney for Plaintiff

Bruce Jones
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORHTERN DISTRICT OF OKLAHOMA

MADELINE CONNOR, Plaintiff, vs. CHRYSLER CREDIT CORPORATION, a Delaware Corporation, Defendant.	)	No. 80-C-1-C

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 3rd day of September, 1980, the above-styled matter after being tried before me without a jury; plaintiff being present and represented by her attorney of record, Paul F. McTighe, Jr. and the defendant being present and represented by one of its attorneys of record, Bruce Jones and the Court after having heard evidence and being fully advised in the premises does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the jurisdiction of this Court has been admitted by both parties.

2. That on or about July 31, 1979, the plaintiff, Madeline C. Connor purchased one 1979 Dodge Diplomat 2 Door Coupe, Vehicle No. GP22-09G244451 from Bob Drewell Dodge, Inc. of Tulsa, Oklahoma.

3. That the terms of sale of said car was set forth in a Retail Installment Contract which has heretofore been entered into evidence as plaintiff's Exhibit No. 1.

4. That a condition of said sale required that Bob Drewell Dodge payoff Mrs. Connor's trade-in vehicle, a 1976 Datsun Stationwagon.

5. That by the terms of said contract Bob Drewell Dodge agreed to pay $563.00 to the First National Bank of Ft. Smith on said trade-in 1976 Datsun Stationwagon.

6. That subsequently the Retail Installment Contract between Madeline Connor and Bob Drewell Dodge, Inc. was assigned and/or sold to Chrysler Credit Corporation.

7. That pursuant to the terms of said contract Chrysler Credit Corporation had the obligation to pay the loan balance on the trade-in vehicle when Bob Drewell Dodge, Inc. failed to pay said loan balance.

8. That the plaintiff learned that her trade-in vehicle had not been paid off by either Bob Drewell Dodge, Inc. and/or the defendant Chrysler Credit Corporation and accordingly plaintiff failed to pay the first installment due on the 1979 Dodge Diplomat.

9. That the plaintiff timely and reasonably notified Chrysler Credit Corporation of the reason for withholding payment on the payment due on the 1979 Dodge Diplomat.

10. That plaintiff notified Chrysler Credit Corporation that she would withhold payments to Chrysler Credit Corporation for the 1979 Dodge Diplomat until her contract with Bob Drewell Dodge, Inc. was complied with, i.e. that the bank loan on the 1976 Datsun was paid.

11. That the defendant Chrysler Credit Corporation made no investigation or inquiry regarding the payoff on the 1979 Dodge Diplomat and could have merely called the bank regarding said matter.

12. That the plaintiff and her counsel had advised Chrysler Credit Corporation of the reasons for the non-payment and therefore Chrysler Credit Corporation had adequate notice of the reasons for withholding of payment.

13. That Chrysler Credit Corporation repossessed the 1979 Dodge Diplomat 2 Door Coupe from the plaintiff illegally without any right to do so and therefore converted said vehicle. That the vehicle contained miscellaneous personal property owned by the plaintiff, to wit: a CB radio; a CB antenna, all having a total value of $210.00.

14. That said 1979 Dodge Diplomat was repossessed illegally by the defendant on or about October 17, 1979, and at said time said vehicle had a value of $6,802.24. Further at said time said vehicle had a loan balance to the defendant of $6,048.01.

15. That the defendant did not use good faith in this action and the defendant's actions were oppressive; and accordingly plaintiff is entitled to punitive and exemplary damages from the defendant in the sum of $2,000.00.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction and venue over this action pursuant to diversity jurisdiction.

2. That this action is controlled by Oklahoma law, specifically 12A O.S. §1-101 (Oklahoma Uniform Commercial Code).

3. That the Uniform Commercial Code should be liberally construed pursuant to 12A O.S. §1-106.

4. That pursuant to 12A O.S. §2-717 a person such as the plaintiff is permitted to withhold payments on a sales contract if timely and reasonable notice is given to the seller and/or assignee. That timely and reasonable notice was given in this instance and therefore 12A O.S. §2-717 is applicable to this action. That in a conversion action the person damaged is entitled to the value of the property at the time of the conversion less the loan amount owed, if any. That in this case said property had a value of $6,802.24 at the time of the conversion on October 17, 1979. That on said date there was a loan balance owed to the defendant of $6,048.00 leaving a net balance of value on said vehicle of $754.24 and for that amount plaintiff is granted judgment against defendant.

5. That the plaintiff is entitled to judgment for her personal property which was taken from said vehicle in the sum of $210.00.

6. That the plaintiff is entitled to damages in the form of punitive and/or exemplary damages from the defendant in the sum of $2,000.00.

7. That the counterclaim of defendant for deficiency judgment after the sale of said vehicle is denied in that defendant is deemed to have purchased said vehicle at the time of the conversion for the value at the time of conversion.

Dated this 15 day of ~~September~~ Oct, 1980.

(Signed) H. Dale Cook
JUDGE

APPROVED AS TO FORM:

Paul F. McTighe, Jr.
Attorney for Plaintiff

Bruce Jones
Attorney for Defendant

DOCKET NO. 330

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SWINE FLU IMMUNIZATION PRODUCTS LIABILITY LITIGATION

W. A. Parks v. United States of America, N.D. Oklahoma,
C.A. No. 80-C-503-F 80- 2515

CONDITIONAL TRANSFER ORDER

On February 28, 1978, the Panel transferred 26 related civil actions to the United States District Court for the District of the District of Columbia for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 1,200 additional actions have been transferred to the District of the District of Columbia. With the consent of that court, all such actions have been assigned to the Honorable Gerhard A. Gesell.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of the District of Columbia and assigned to Judge Gesell.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 78 F.R.D. 561, 567-68, the above-captioned tag-along action is hereby transferred to the District of the District of Columbia on the basis of the hearings held on January 27, 1978, May 26, 1978, September 29, 1978, November 1, 1978, March 23, 1979 and April 27, 1979, and for the reasons stated in the opinions and orders of February 28, 1978, 446 F. Supp. 244, July 5, 1978, 458 F. Supp. 648, and January 16, 1979, 464 F. Supp. 949, and with the consent of that court assigned to the Honorable Gerhard A. Gesell.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Columbia. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Patricia D. Howard
Clerk of the Panel

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KER-BAR PIPE & SUPPLY, INC., a Texas corporation, Plaintiff, vs. DANNY HILLENBERG, an individual d/b/a HILLENBERG PIPE & SUPPLY and GERALD A. ESKRIDGE, an individual, Defendants, and H. RICHARD RASKIN, Garnishee.	)	No. 79-C-552-E

ORDER OF JUDGMENT

This case comes on for a hearing before the Court on this 14th day of October, 1980 for a determination as to the amount of attorney fees to be awarded the Plaintiff against H. Richard Raskin, Garnishee. The Court granted Summary Judgment against H. Richard Raskin, Garnishee, for the sum of $10,000 plus interest, costs and reasonable attorney fees by its Order dated June 17, 1980. At the hearing before this Court on the 1st day of July as to the reasonable attorney fees to be awarded the Plaintiff against Mr. Raskin, the Court continued the consideration of the amount of attorney fees to be awarded the Plaintiff pending the outcome of the Plaintiff's discovery efforts against Mr. Raskin as to certain documents relating to the disposition of the funds held by Mr. Raskin in trust for the Plaintiff.

The Court is advised that such discovery is now completed, the Plaintiff's action against Mr. H. Richard Raskin, Garnishee, has been settled and all of Plaintiff's court costs have been paid. This Court now has for determination the amount of attorney fees which are reasonable under the circumstances to be awarded to the Plaintiff as against H. Richard Raskin, Garnishee. The Court has reviewed the pleadings in this Garnishment action, has heard argument of counsel in this case and has specifically reviewed the Stipulations of H. Richard Raskin, Garnishee, filed

herein on July 3, 1980, the Supplemental Stipulations of H. Richard Raskin, Garnishee, As To Attorney Fees To Be Awarded Plaintiff filed herein on August 14, 1980, and the additional time records presented in evidence at the hearing today by Plaintiff's counsel for the period of August 14 through October 9, 1980.

From reviewing the above, the Court finds that the Stipulations of H. Richard Raskin, Garnishee, as to the reasonableness of the rates for the legal services of counsel for the Plaintiff and as to the reasonableness of the time spent by counsel for the Plaintiff on this action should be, and the same are, hereby adopted by this Court. Additionally, the Court finds that the additional time records submitted in evidence today reflects a reasonable amount of time for the period covered by said time records. Therefore the Court finds that the following are reasonable rates for the legal services for the following attorneys and law clerk:

Hillis Eskridge	$80/hour
Lance Stockwell	$75/hour
Charles W. Shipley	$65/hour
Charles Grissom	$40/hour
Mary Gilliam	$15/hour

The Court further finds that the following amount of time on this Garnishment action is reasonable for the services of the counsel for the Plaintiff for the period of January 21, 1980, through October 9, 1980:

Hillis Eskridge	.25
Lance Stockwell	.75
Charles W. Shipley	100.25
Charles Grissom	43.75
Mary Gilliam	4.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Ker-Bar Pipe & Supply, Inc., have judgment against the Garnishee, H. Richard Raskin, for its reasonable attorney fees in the sum of $ 7,402.50.

Dated this 14th day of October, 1980.

JAMES O. ELLISON
United States District Judge for
the Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

80-C-219-B ✓

JAMES LONNIE KAFER, an individual	)
Plaintiff,	)
vs.	)
JOHN THOMAS STANLEY, an individual, and GILBERT TRUCKING CO., an Alabama corporation	)
Defendants,	)

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good cause shown, this cause of action and complaint is dismissed with prejudice.

Entered this 14th day of October, 1980.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BETTY HASTINGS, Plaintiff,	)	
vs.	)	79-C-671-BT
HAROLD McCLINTOCK, Defendant.	)	

FILED

OCT 10 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

Based on the Findings of Fact and Conclusions of Law filed this date, IT IS ORDERED Judgment is entered in favor of the Plaintiff, Betty Hastings, and against the Defendant, Harold McClintock, in the amount of $30,989.00, with prejudgment interest at the rate of 6% as set forth in the Findings of Fact and Conclusions of Law, plus interest at the rate of 12% per annum from the date of Judgment until paid.

ENTERED this 10th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BETTY HASTINGS, Plaintiff,	)	
vs.	)	79-C-671-BT
HAROLD McCLINTOCK, Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties have agreed to submit this case for dispositive ruling on the record. There being no dispute as to any material facts, the Court, after oral argument on September 29, 1980, and after reviewing the briefs of the parties, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 11, 1965, Betty W. McClintock (now Hastings) and Harold McClintock, Jr., entered into an "Alimony and Property Settlement Agreement." The pertinent part of said agreement at issue in this litigation, reads as follows:

> "In addition to the foregoing division of property and the child support payments to be made, it is further agreed that Harold will pay to Betty, annually, a sum equal to thirty-three and one-third percent (33 1/3%) of all income and thirty-three and one-third percent (33 1/3%) of the value of all money or other properties of every kind or character, whether real, personal or mixed, vested or contingent, and wherever situated, which Harold may earn or acquire from third parties by gift or inheritance, in excess of $12,000.00 during each calendar year of the period described below. In computing the income of Harold in any given year, there shall be deducted all reasonable trade and business expenses."

2. The plaintiff's contractual rights to receive alimony under the Agreement commenced upon the date of the execution of the Agreement and terminated on December 31, 1979.

3. The defendant's income and accumulations for the years 1970-1979 are reflected on the attached Schedule "A", and have been agreed by the parties as reflected in the pre-trial order.

4. Harold McClintock, pursuant to the terms of the Agreement, was to receive the first earned or accumulated $12,000 annually and plaintiff, Betty McClintock (now Hastings) was entitled to 1/3rd of all sums over that amount each year.

5. The parties to the agreement did not intend the annual sum earned or accumulated by the defendant be net of taxes.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction of the parties and the subject matter.

2. The claim of Betty McClintock (now Hastings) for the years 1970 through 1973 is barred by the Oklahoma five year period of limitations, 12 O.S. §95. (This was conceded by the parties at the hearing and it was further conceded the defense of laches does not apply.)

3. Plaintiff is entitled to a Judgment in the amount of $30,989 which is arrived at by taking one-third of the amount earned or accumulated in excess of $12,000 annually for the years 1974 through 1979 as reflected on Schedule "A" attached.

4. Plaintiff is entitled to recover pre-judgment interest at the rate of 6% per annum on each annual increment due as of January 1 of each year. 23 O.S. §6; Frankfurt v. Bunn, 408 P.2d 785 (Okl. 1965); King v. Southwestern Cotton Oil Co., 585 P.2d 385 (Okl.Ct.App. 1978).

5. Plaintiff is entitled to interest at the rate of 12% per annum from the date of Judgment until paid. 12 O.S. §727 (1980 Supp.)

ENTERED this 10th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

1970*	Income	$11,280 -$12,000 -$720		-0
1971*	Income	$ 7,393 -$12,000 -$4,607		-0-
1972*	Income	$ 5,464 -$12,000 -$6,536		-0-
1973*	Income	$13,238 -$12,000 $ 1,238	1/3=	$ 413
1974	Income	$15,304 -$12,000 $ 3,304	1/3=	$1,101
1975	Income	$23,332 -$12,000 $11,332	1/3=	$3,777
1976	Income	$24,981 -$12,000 $12,981	1/3=	$4,327
1977	Income	$34,409 -$12,000 $22,409	1/3=	$7,470
1978	Income	$34,619 -$12,000 $22,619	1/3=	$7,540
1979	Income	$32,321 -$12,000 $20,321	1/3=	$6,774
			TOTAL	$30,989

* These years are barred by the Statute of Limitations.

SCHEDULE "A"

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RAY MARSHALL, Secretary of Labor, United States Department of Labor,	)	
Plaintiff,	)	
v.	)	No. 77-C-207-BT
UNITED VIDEO, INC.,	)	
Defendant.	)	

AMENDED JUDGMENT

In accordance with the Memorandum Opinion, Findings of Fact and Conclusions of Law entered in this action on this date, it is:

ORDERED, ADJUDGED AND DECREED that Defendant, United Video, Inc., as well as the agents, servants, employees and those persons in active consort or participation with Defendant are permanently enjoined and restrained from violating the provisions of 29 U.S.C. §§ 207(a)(2), 211(c), 215(a)(2) and 215(a)(5) (Fair Labor Standards Act of 1938, as amended), hereinafter referred to as the Act, as follows:

I.

Defendant shall not, contrary to the provisions of the Act, 29 U.S.C. §§ 207(a)(2) and 215(a)(2), employ any employee engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than 40 hours unless Defendant compensates such employee for employment in excess of 40 hours in such workweek at a rate not less than one and one-half times the regular rate at which such employee is employed.

II.

Defendant shall not, contrary to the provisions of the Act, §§ 211(c) and 215(a)(5) fail to make, keep and preserve the records required by the Act and the regulations and orders issued pursuant to the Act.

III.

It is further ORDERED, that Defendant be and is hereby enjoined and restrained from withholding payment of overtime compensation in the sum of $17,843.46, which the Court finds to be due under the Act to Defendant's employees, named in the Findings of Fact and Conclusions of Law, together with interest at the rate of six percent (6%) per annum from the median point of each employee's period of employment as set forth in the Findings of Fact and Conclusions of Law to date of this Judgment with interest at the rate of twelve percent (12%) thereafter until paid.

IV.

It is further ORDERED, that Plaintiff, upon receipt of such certified or cashier's check from Defendant, promptly proceed to make distribution, less income tax and social security withholdings, of the sums due Defendant's employees as indicated above to such employees or to the legal representative of any deceased employee. If, after making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, Plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment by any such person, Plaintiff, pursuant to 28 U.S.C. Section 2041, shall deposit such funds with the Clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.

V.

It is further ORDERED that Defendant pay the costs of this action.

DATED AND FILED this 10th day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RAY MARSHALL, Secretary of Labor, United States Department of Labor, Plaintiff,	)	
v.	)	No. 77-C-207-BT
UNITED VIDEO, INC., Defendant.	)	

ORDER AMENDING FINDING OF FACT No. 3
OF MEMORANDUM OPINION AND SUGGESTED
AMENDED JUDGMENT

The Court filed its Memorandum Opinion and Judgment in this case on September 30, 1980.

Due to a scrivener's error, Finding of Fact No. 3 on page 13 of the Court's Memorandum Opinion erroneously contains the sum of $2793.54. The correct sum which should have been stated is $442.74.

Paragraph III on page two of the Court's Judgment erroneously contains the sum of $20,194.26. The correct sum which should have been stated is $17,843.46.

It is ORDERED that Finding of Fact No. 3 on page 13 of the Court's Memorandum Opinion is amended to show the sum of $442.74.

It is further ORDERED that Paragraph III on page two of the Court's Judgment should be amended to show the sum of $17,843.46.

Dated this 10th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

10 1980 CO

EDWIN YOUNGBLOOD, Regional Director of the Sixteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board	)	
Petitioner,	)	
vs.	)	No. 80-C-44-B ✓
SOLAR EXCAVATING, INC., and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 627, AFL-CIO,	)	
Respondents.	)	

O R D E R

In accordance with the Mandate of the United States Court of Appeals, Tenth Circuit, and this Court's Order of June 16, 1980, this case is hereby dismissed as moot.

DATED this 10th day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
LAWRENCE F. MILLER, Defendant.	)	CIVIL ACTION NO. 80-C-142-E

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 10th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 10th day of October, 1980.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 1 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 80-C-235-B
CHOOWEE RAY BREWER, CAROLINE M. BREWER, and CREDIT BUREAU OF BARTLESVILLE, INC., Defendants.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, Choowee Ray Brewer, Caroline M. Brewer, and Credit Bureau of Bartlesville, Inc., appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Choowee Ray Brewer and Caroline M. Brewer, were served with Summons, Complaint, and Amendment to Complaint on May 2, 1980, and June 27, 1980, respectively; that Defendant, Credit Bureau of Bartlesville, Inc., was served with Summons, Complaint, and Amendment to Complaint on June 30, 1980; all as appears on the United States Marshal's Service herein.

It appearing that the Defendants, Choowee Ray Brewer, Caroline M. Brewer, and Credit Bureau of Bartlesville, Inc., have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Beginning at a point 140 feet East and 170 feet North of the Southwest corner of the East 3.98 acres of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter of Section 28, in Township 27 North, of Range 13 East of the Indian Meridian; thence North 129.65 feet; thence East to the West line of the S/2 SW/4 NE/4 SW/4 of said Section; thence South 129.65 feet; thence West to the point of Beginning. Subject to right-of ways of record.

THAT the Defendants, Choowee Ray Brewer and Caroline M. Brewer, did, on the 8th day of May, 1972, execute and deliver to the United States of America acting through the Farmers Home Administration, their mortgage and mortgage note in the sum of $8,500.00 with 7 1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that Defendants, Choowee Ray Brewer and Caroline M. Brewer, made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $8,809.39, plus the accrued interest of $1,595.08 as of August 1, 1980, plus interest from August 1, 1980, until paid at the rate of 7 1/4 percent per annum, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Choowee Ray Brewer and Caroline M. Brewer, in personam for the principal sum of $8,809.39, plus the accrued interest of $1,595.08 as of August 1, 1980, plus interest at the rate of 7 1/4 percent per annum from August 1, 1980, until paid, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Credit Bureau of Bartlesville, Inc.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and

apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

BY: ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 80-C-234-E
JOHN W. DILLINGER, SHARON L. DILLINGER a/k/a SHARON LYNN DILLINGER, DELAWARE COUNTY BANK, a Corporation, MONTGOMERY WARD & CO., INC., and WESTCO HOME FURNISHINGS, Defendants.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, John W. Dillinger, Sharon L. Dillinger a/k/a Sharon Lynn Dillinger, Delaware County Bank, a Corporation, Montgomery Ward & Co., Inc., and Westco Home Furnishings, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, John W. Dillinger and Sharon L. Dillinger a/k/a Sharon Lynn Dillinger, were served with Summons, Complaint, and Amendment to Complaint on September 11, 1980; that Defendants, Delaware County Bank, a Corporation, and Montgomery Ward & Co., Inc., were served with Summons, Complaint, and Amendment to Complaint on May 2, 1980, and July 11, 1980, respectively; and, that Defendant, Westco Home Furnishings, was served with Summons, Complaint, and Amendment to Complaint on July 17, 1980; all as appears on the United States Marshal's Service herein.

It appearing that the Defendants, John W. Dillinger, Sharon L. Dillinger a/k/a Sharon Lynn Dillinger, Delaware County Bank, a Corporation, Montgomery Ward & Co., Inc., and Westco Home Furnishings, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Ten (10), CARTER'S CABIN SITES, according to the recorded plat thereof, Delaware County, Oklahoma.

THAT the Defendants, John W. Dillinger and Sharon L. Dillinger, did, on the 14th day of July, 1978, execute and deliver to the United States of America acting through the Farmers Home Administration, their mortgage and mortgage note in the sum of $18,200.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, John W. Dillinger and Sharon L. Dillinger, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the principal sum of $18,357.68, plus accrued interest of $2,795.70 as of July 7, 1980, plus interest thereafter at the rate of 8 1/2 percent per annum, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, John W. Dillinger and Sharon L. Dillinger, in personam, for the principal sum of $18,357.68, plus accrued interest of $2,795.70 as of July 7, 1980, plus interest thereafter at the rate of 8 1/2 percent per annum, until paid, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Delaware County Bank, a Corporation, Montgomery Ward & Co., Inc., and Westco Home Furnishings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

S/ JAMES O. ELLIS

UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

BY: ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
RONALD P. JONES, Defendant.	)	CIVIL ACTION NO. 79-C-598-E

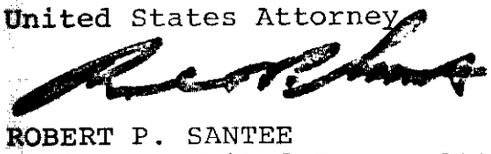
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 9th day of October, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OCT 8 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GENEVIEVE THATCHER,

Petitioner,

-vs-

Case No. 80-C-128-C

WARDEN, OKLAHOMA STATE PRISON,

Respondent.

ORDER

THE COURT having considered Petitioner's Application to Withdraw her Petition for Writ of Habeus Corpus in the above styled matter at this time does order that said Petition for Writ of Habeus Corpus be allowed to be withdrawn.

IT IS THEREBY ORDERED that Petitioner's Petition for Writ of Habeus Corpus in case number 80-C-128-C, now pending before this Court, is hereby stricken and removed from this Court's consideration.

It is so ordered this 8th day of October, 1980.

s/H. DALE COOK

Judge, U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT COTNER, Petitioner,	)	
vs.	)	No. 80-C-385-C
JUDGE LAMB, et al., Respondent.	)	

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

On July 11, 1980, the petitioner filed a Petition for a Writ of Habeas Corpus regarding a conviction in State Court, Tulsa County in January of 1980 (CRF-79-2718) in which a sentence of 15 years for unlawful delivery of marijuana was imposed.

There are four contentions in the petition: (1) violations of civil and constitutional rights in removal of petitioner from federal custody for sentencing in state court; (2) violation of petitioner's rights under the 1st, 5th 6th and 14th Amendments, effectively preventing preparation of a proper defense in CR-80-34-W, and appeal of plaintiff's conviction in a state case; (3) unconstitutional harrassment through bias and prejudice of the presiding judge; and (4) denial of speedy trial rights through selective enforcement and violations of plaintiff's family's constitutional rights.

The law is clear that Habeas Corpus will not lie if the person seeking the writ is not in the physical custody of the official to whom the writ is directed. Whiting v. Chew, 273 F.2d 885, (4th Cir. 1960), cert. denied 362 U.S. 956, 80 S.Ct. 872, 4 L.Ed.2d 873 (1960). Gregg v. State of Tenn., 425 F.Supp. 394 (E.D.Tenn. 1976). At time of the filing of this Habeas Corpus action, petitioner was a federal prisoner

incarcerated in the State of Texas, Bowie County. Therefore the petitioner's request is hereby dismissed.

Petitioner has also filed a Writ of Mandamus asking this Court to order reinstatement of the already posted appeal bond of $20,000 in State of Oklahoma v. Cotner, CRF-79-2718, or, in the alternative to issue an order granting plaintiff a release in CRF-79-2718 on an OR. appeal bond.

The exhaustion doctrine requires that petitioner first present his claims to the state courts. 28 U.S.C. §2254(b). Picard v. Connor, 404 U.S. 270, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971); Gurule v. Turner, 461 F.2d 1083 (10th Cir. 1972); McInnes v. Anderson, 366 F.Supp. 983 (E.D.Okla. 1973). The record reflects that the petitioner has failed to present the contentions listed in this Writ to the Oklahoma Courts and therefore has failed to exhaust his state court remedies. This Court must dismiss this claim without prejudice for failure to exhaust the remedies available in the Oklahoma Courts. It is noted that the petitioner admits and the record shows that on July 9, 1980, petitioner's appeal bond was reduced from $30,000 to $20,000 as petitioner has requested in his Writ of Mandamus. Therefore, his request appears to be moot.

It is so Ordered this 9th day of October, 1980.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ALLSTATE INSURANCE COMPANY, a foreign corporation, Plaintiff,	)	
vs.	)	No. 79-C-554-BT
THOMAS SOAP, MARY SOAP, AUDREY COLES and ANNA MAE SPRADLING Defendants.	)	

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law entered in this case on the 8th day of October, 1980, judgment is hereby rendered in favor of the plaintiff, Allstate Insurance Company, and against the defendants.

DATED this 8th day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ALLSTATE INSURANCE COMPANY, a foreign corporation,	)	
Plaintiff,	)	
vs.	)	No. 79-C-554-BT
THOMAS SOAP, MARY SOAP, AUDREY COLES and ANNA MAE SPRADLING	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action for declaratory judgment came on regularly for nonjury trial before the undersigned Judge on July 28, 1980. Upon consideration of the evidence and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff, Allstate Insurance Company ("Allstate"), is an Illinois corporation with its principal place of business in the State of Illinois. Defendants are all citizens of the State of Oklahoma.

2. Prior to May 1978, Allstate issued its policy of automobile insurance to Thomas Soap covering a 1972 Ford automobile, as well as others. By the terms of the policy, coverage was extended to Mary Soap, wife of the named insured.

3. Among the provisions of the policy of insurance are the following:

> "5. Changes
>
> The terms of this policy may not be waived or changed by notice to or knowledge possessed by any agent or other person, but, subject to Condition 6, only by policy endorsement. Such terms of this policy as are in conflict with statutes of the state in which this policy is issued are hereby amended to conform.
>
> 6. Liberalization of Policy Provisions
>
> If Allstate revises this policy form during the policy period, with respect to policy provisions, endorsements or rules, by which the insurance hereunder if then issued would

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"be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval or acceptance of such revision by the appropriate insurance supervisory authority for the remainder of the policy period.

* * *

11. Cancellation

* * *

The named insured may cancel this policy by mailing to Allstate written notice stating when thereafter such cancellation shall be effective. Allstate may cancel this policy by mailing to the insured named in the declarations at his address shown in this policy, written notice stating when not less than 10 days thereafter such cancellation shall be effective.

The mailing of notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of written notice shall be equivalent to the mailing. In all cancellations, whether by Allstate or the named insured, earned premium shall be computed on a pro rata basis. Premium adjustment may be made at the time cancellation is effected or as soon as practicable after cancellation becomes effective; but payment or tender of unearned premium is not a condition of cancellation.

Notwithstanding the foregoing, after this policy has been in effect for 60 days or, if the current policy period is a renewal, then effective immediately, Allstate shall not exercise its right to cancel the insurance afforded by this policy or reduce the limits thereof prior to the expiration of the policy period unless:

(a) the named insured fails to pay premiums when due; * *"

4. Effective May 16,1978, the policy of insurance was renewed for the period May 16, 1978 to May 16, 1979 with the premium to be paid in ten monthly installments of $37.85 each, due the 16th of each month beginning May 16, 1978.

5. The payment due on May 16, 1978 was received by Allstate on May 21, 1978; the June 16 payment was received on time; the July 16 payment was received on August 1, 1978.

6. No further payment was received prior to August 25, 1978. On that date, notice of cancellation was mailed to Thomas Soap by regular United States Mail. The notice of cancellation informed the insured, Thomas Soap, that the policy was being cancelled for nonpayment of premiums effective September 7, 1978, at 12:01 A.M. The premium payments previously made were sufficient to purchase coverage up to that date.

7. No payment was received by Allstate prior to September 7, 1978, and the policy was cancelled effective at 12:01 A.M. on that date.

8. A payment of $37.85 was received by Allstate on September 12, 1978. The payment was accepted and the policy was reinstated effective September 13, 1978.

9. On September 6, 1978, Thomas Soap obtained a check in the amount of $37.85 from his employer, W. H. Kreasler, Sr., payable to Allstate Insurance Company. On the same day, after 5 P.M., Thomas Soap placed the check in an envelope addressed to Allstate, in a mailbox outside the United States Post Office in Hulbert, Oklahoma.

10. Mary Soap testified, over objection of Allstate, that on September 5 or 6, 1978, she placed a telephone call to Allstate's office in Kansas, and discussed the premium payment with a man whose name she did not get. Her testimony was that she was told in this telephone conversation that the policy would remain in effect so long as a check was in the mail on September 6, 1978.

11. On September 8, 1978, Mary Soap was involved in an automobile accident. As a result of that accident, the other defendants in this case have filed suit against Mary Soap in the State courts.

12. Defendant did not raise the issue of estoppel until trial. This affirmative defense was not raised in the answer, nor by motion, nor is it included in the pre-trial order.

CONCLUSIONS OF LAW

1. Any Findings of Fact which could also be considered Conclusions of Law are incorporated herein.

2. This court has jurisdiction over the parties and over the subject matter by reason of diversity of citizenship. 28 U.S.C. §1332 and 28 U.S.C. §2201.

3. Allstate's cancellation of the policy of insurance issued to Thomas Soap complied with the terms and provisions of the policy, and the cancellation notice was properly mailed.

4. The insurance policy was cancelled effective at 12:01 A.M., on Sepember 7, 1978.

5. Allstate therefore has no duty under this policy to Thomas or Mary Soap as regards the automobile accident that occurred on September 8, 1978.

6. Defendants have waived the affirmative defense of estoppel by failure to raise it prior to trial. State Farm Mutual Automobile Insurance Co. v. Mid-Continent Casualty Co., 518 F.2d 292 (10th Cir. 1975); Radio Corporation of America v. Radio Station KYFM, Inc., 424 F.2d 14 (10th Cir. 1970); Rule 8(c), Federal Rules of Civil Procedure.

7. Even if the affirmative defense of estoppel were not waived, the evidence is insufficient to establish estoppel. The policy specifically provides that the terms of the policy may not be waived or changed except by endorsement. Further, at the time of this accident the policy had been properly cancelled, and Allstate had no obligation to apply the premium received on September 12 retroactively. Massachusetts Protective Association v. Turner, 41 P.2d 689 (Okl. 1935); Taylor v. Mutual Ben. Health & Accident Ass'n, 133 F.2d 279 (8th Cir. 1943); Continental Insurance Co. of New York v. Hall, 137 P.2d 908 (Okl. 1943); Kimball v. Kingsbury, 493 P.2d 300 (Utah, 1972).

8. Judgment will therefore be entered in favor of plaintiff, and against the defendants, declaring that the policy of insurance issued by plaintiff was cancelled effective September 7, 1978, and Allstate Insurance Company has no duty to defend or indemnify Thomas Soap or Mary Soap for any liability arising from the accident occurring September 8, 1978.

DATED this 8th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE AIR CRASH NEAR
VAN CLEVE, MISSISSIPPI
ON AUGUST 13, 1977

MDL 407

FILED

OCT - 6 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

H. P. LUCAS, et al.

Plaintiffs,

vs.

BEECH AIRCRAFT CORPORATION, et al.

Defendants.

CA3-79-0977-K

80-C-169

AUDREY E. CRAWFORD, et al.

Plaintiffs,

vs.

BEECH AIRCRAFT CORPORATION, et al.

Defendants.

CA3-79-1022-G

80-C-164

STIPULATION OF DISMISSAL

It is hereby stipulated by the undersigned parties that the above-entitled action may be dismissed without prejudice, Third-Party Defendant, VACUUM HEAT TREATING CO., INC., to bear its own costs.

IT IS FURTHER stipulated that VACUUM HEAT TREATING CO., INC., waives the Statute of Limitations in order to assure that no party shall be prejudiced by this Dismissal.

DATED this 22 day of September, 1980.

Don Black
Attorney for Third-Party Plaintiff,
Aircraft Engine & Accessory Co.

Michael W. Anglin
Attorney for Third-Party Defendant,
Vacuum Heat Treating Co., Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNIVERSAL TIRE CORPORATION, Plaintiff, vs. STONE TRUCKING CO., a corporation, and VAN STONE, an individual, Defendants.	)	79-C-646-BT

ORDER

The plaintiff having filed a Dismissal with Prejudice, stating the cause of action has been settled,

IT IS ORDERED, this cause of action and complaint are dismissed with prejudice.

ENTERED this 6th day of October, 1980.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA FOR AND ON BEHALF OF THE DOLESE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 80-C-176-E
NURRIE CONSTRUCTION CO., INC., and FIREMAN'S FUND INSURANCE COMPANY,	)	
Defendants.	)	

FILED

OCT 6 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DISMISSAL WITHOUT PREJUDICE

COMES NOW the defendant, Nurrie Construction Co., Inc., by and through their attorney of Record, Philip Warren Redwine, acknowledges full and complete satisfaction of the within cause and hereby dismisses the same without prejudice to any future action at the cost of plaintiffs.

PHILIP WARREN REDWINE
Attorney for Defendants

HAROLD M. DURALL
Attorney for Plaintiff

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Dismissal Without Prejudice was mailed to Harold M. Durall, Attorney for Plaintiff, DURALL, MEADOWS, SHEEHAN & WALTERS, 1220 United Founders Life Tower, Oklahoma City, Oklahoma , 73112, with proper postage affixed thereto.

LAW OFFICES OF
PHILIP WARREN REDWINE
410 SECURITY BANK BLDG.
NORMAN, OKLAHOMA 73069
(405) 364-5551

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICAN FOR AND ON BEHALF OF THE DOLESE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 80-C-176-E
NURRIE CONSTRUCTION CO., INC., and FIREMAN'S FUND INSURANCE COMPANY,	)	
Defendants.	)	

FILED

OCT 6 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF
DISMISSAL WITH PREJUDICE

Plaintiff, United States of America for and on Behalf of the Dolese Company, by and through their attorney of record, Harold M. Durall, acknowledge full and complete satisfaction of the within cause and hereby dismiss the same with prejudice to any future action at the cost of defendants or L & B Road Construction, Inc.

Philip Warren Redwine
PHILIP WARREN REDWINE
Attorney for Defendants

Harold M. Durall
HAROLD M. DURALL
Attorney for Plaintiff

CERTIFICATE OF MAILING

This is to certify that on the 25th day of August, 1980, a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed to Philip Warren Redwine, Attorney for Defendants, 410 Security National Bank Building, Norman, Oklahoma, 73069, with proper postage affixed thereto.

Harold M. Durall

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS H. FLANAGAN,

Plaintiff,

vs.

JOHN FLACK,

Defendant.) No. 80-C-213

O R D E R

NOW, on this 2nd day of October, 1980, and upon the Motion of Plaintiff, Thomas H. Flanagan, for dismissal of the above entitled action without prejudice, came on regularly for hearing pursuant to the Court's docket, and it appearing that Defendant in his Answer makes no counterclaim against Plaintiff and will not be substantially prejudiced by the dismissal.

IT IS HEREBY ORDERED that the above entitled action be, and it hereby is, dismissed without prejudice.

(Signed) H. Dale Cook

JUDGE OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

HAYES SCHOOL PUBLISHING CO., INC.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL NO. 80-C-527-C
	)	
HAYES BOOKS, INC.	)	
	)	
Defendant.	)	

FINAL JUDGMENT

WHEREAS this Court has jurisdiction over the subject matter of this action; and

WHEREAS Defendant, Hayes Books, Inc. and Hayes School Publishing Co., Inc. (hereafter collectively referred to as the "Stipulating Parties") have stipulated to this Court's jurisdiction over their persons; and

WHEREAS the Stipulating Parties have stipulated to entry of this Judgment; and

WHEREAS the Stipulating Parties have consented to be bound by this Judgment,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Defendant's use of the mark or name HAYES, HAYES BOOKS and/or HAYES BOOKS, INC. in connection with the advertising, sale and/or distribution of children's educational materials, publications and/or books constitutes infringement and unfair competition with respect to Plaintiff's valid common law, state and federal rights in its trademark and tradename HAYES.

2. Plaintiff's prayer for damages, for Defendant's profits and for attorney's fees is hereby denied.

3. Defendant, its agents, servants and employees be and hereby are permanently enjoined as of the date of this Judgment from any and all use of the mark or name HAYES, HAYES BOOKS and/or HAYES BOOKS, INC. or any other mark or name which so

resembles Plaintiff's trademark and tradename HAYES as to be likely to cause confusion or mistake or to deceive or to otherwise infringe Plaintiff's trademark and tradename HAYES and from falsely designating the origin of its goods or otherwise unfairly competing with Plaintiff. Such use from which Defendant is permanently enjoined includes but is not limited to the use of HAYES, HAYES BOOKS or HAYES BOOKS, INC. in the following manner:

a) affixation to the cover of or use of such mark or name on the title page of books, workbooks (including duplicating workbooks) and all other similar or related publications or children's educational materials published or distributed by Defendant; and

b) use of such mark or name on advertising materials, catalogs, order forms, display materials including signs utilized at trade shows and all other like or related promotional materials, provided that the salesmen and/or agents of Defendant may continue to use order forms and catalogs already in their possession until replacement is made thereof by Defendant with order forms and catalogs which conform to this Judgment which shall be printed and distributed to such salesmen and/or agents forthwith. However, use of such order forms and catalogs already in the possession of salesmen and/or agents of Defendant shall not in any event extend beyond a period of thirty (30) days and ninety (90) days, respectively, from date of this Judgment.

4. Nothing herein shall operate to preclude Defendant from selling or distributing products that, as of the date of this Judgment, already exist in inventory and which bear the mark or name HAYES, HAYES BOOKS or HAYES BOOKS, INC. so long as such products are sold or distributed without placement or renewal of any advertising of any sort featuring the mark or name HAYES, HAYES BOOKS or HAYES BOOKS, INC. and without the use of such mark

or name as set forth in paragraph 3(b) above. However, Defendant's sale or distribution of products that, as of the date of this Judgment, already exist in inventory and which bear the mark or name HAYES, HAYES BOOKS or HAYES BOOKS, INC. on the cover thereof, unless such mark or name is used in connection with the name USBORNE, shall not extend beyond a period of ninety (90) days from date of this Judgment.

5. It is further ORDERED, ADJUDGED and DECREED that the use of the name or names of USBORNE & HAYES, USBORNE & HAYES BOOKS and/or USBORNE & HAYES BOOKS, INC. by Defendant on the cover and/or title page of the materials described in paragraph 3(a) above shall not be deemed to violate this Judgment provided that equal emphasis is given to the words "USBORNE" and "HAYES" and that the word "USBORNE" precedes the word "HAYES" during all such uses, except that the name USBORNE & HAYES or any other combination of words that includes the name "HAYES" shall not be used on the covers of workbooks (including duplicating workbooks) published or distributed by Defendant.

6. It is still further ORDERED, ADJUDGED and DECREED that the use of the name USBORNE & HAYES, USBORNE & HAYES BOOKS and/or USBORNE & HAYES BOOKS, INC. by Defendant on the materials or in the manner described in paragraph 3(b) above shall not be deemed to violate this Judgment, provided that equal emphasis is given to the words "USBORNE" and "HAYES" and that the word "USBORNE" precedes the word "HAYES" during all such uses.

7. Defendant, its agents, servants and employees shall take all necessary steps to remove and withdraw the corporate name HAYES BOOKS, INC. from the official records of any governmental body wherein it is recorded.

8. Defendant, within ninety (90) days from the date of this Judgment, shall notify Plaintiff of the steps taken by it to comply with this Judgment, including forwarding representative

samples of the products and/or materials described in paragraphs 3(a) and 3(b) above to Plaintiff for inspection.

9. Plaintiff or its representative may at any time inspect Defendant's inventory of children's educational materials, publications and/or books, advertising materials, catalogs, and order forms and other related materials at any such facility or location which is appropriate upon giving reasonable notification to Defendant.

10. All parties shall bear their own costs.

IT IS SO ORDERED THIS 3rd DAY of October, 1980.

(Signed) H. Dale Cook

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LLOYD G. SHIVERS and ISAAC HACKET JOHNSON, Co-Administrators for the Estate of Jerol F. Johnson, Deceased,	)	
Plaintiffs,	)	
vs.	)	No. 79-C-417-BT ✓ (Consolidated with 79-C-418 and 79-C-419)
CLAUDE MICHAEL DAVIS; T.L.C. FARM LINES, INC., a foreign corporation; CAROLINA CASUALTY INSURANCE COMPANY; C.D.B., INC., a foreign corporation; MICHIGAN MUTUAL INSURANCE COMPANY; R.M. GERAWAN COMPANY; and TOM LANGE COMPANY,	)	
Defendants.	)	

CS

ORDER OF DISMISSAL

NOW, this 2 day of Oct, 1980, the above entitled cause comes on pursuant to the Plaintiffs' Application for a Dismissal pursuant to Rule 41(a). For good cause shown;

IT IS, THEREFORE, ORDERED, by this Court that the Plaintiffs' Petition be dismissed without prejudice as against the Defendant, R.M. Gerawan Company only.

Thomas R. Brett

THOMAS R. BRETT, JUDGE
United States District Court
for the Northern District
of Oklahoma

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

O. D. CLEMONS, Plaintiff,	)	
vs.	)	No. 79-C-132-B
RIGGS NATIONAL BANK, SEABOARD COAST LINE INDUSTRIES, INC., FRUIT GROWERS EXPRESS COMPANY, ST.LOUIS-SAN FRANCISCO RAILWAY COMPANY, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, BEN HILL GRIFFIN, INC., FLORIDA CITRUS MUTUAL, Defendants.	)	

ORDER

On May 11, 1980, this Court entered an order overruling defendant Seaboard Coast Line Industries, Inc.'s Motion to Dismiss. Defendant Seaboard now asks that the Court withdraw its previous order and sustain the Motion to Dismiss or alternately certify the question to the Supreme Court of Oklahoma.

After much soul searching and careful examination of the scant case law, the Court concludes that the May 11, 1980 Order was incorrect, and that Seaboard's Motion to Dismiss must be sustained.

In Lindsey v. Dayton-Hudson Corporation, 592 F2d 1118 (10th Cir. 1979), the Court of Appeals held that the refusal by the Court Clerk to accept for filing a tendered summons was not equivalent to a court order quashing the summons for purposes of Title 12 O.S. §154.5. The Court there stated:

> "We believe appellee is correct in arguing that to quash a summons it first must be issued. We do not regard the clerk's refusal to accept for filing a tendered summons as the quashing thereof by any duly constituted authority. Whether or not the action of the clerk or the judge was correct with respect to the John Doe complaint and summons, it was the responsibility of the plaintiff to persist and obtain a court ruling which he could follow or appeal."

In this case, after Seaboard filed its motion to quash the first summons, plaintiff confessed the motion and issued alias

summons without waiting for the Court to rule. Careful reflection reveals that there is no meaningful difference between the Court Clerk in Lindsey v. Dayton-Hudson, supra, and the plaintiff here. Neither of these persons is the duly constituted authority referred to in §154.5, which provides that a new summons may be served within sixty (60) days after the date a Court quashes the summons or its service.

In Lake v. Lietch, 550 P2d 935 (Okl. 1976), the Supreme Court of Oklahoma stated the purpose of §154.5:

> " . . . to aid a plaintiff in the situation where a summons was issued prior to the running of the statute of limitations but was not ruled on as ineffective until after the statute had expired. It is remedial legislation permitting 'a new summons' to relate back to one issued within the statute of limitations and thus the action is timely 'commenced' as defined in §97...."

However, the Court continued:

> "It was not the intent of the Legislature in this enaction to circumvent the statute of limitations entirely. ....
>
> "There were no statutes of limitations at common law; they are creatures of statutes. Statutory exceptions should be strictly construed and cannot be enlarged from consideration of inconvenience. [citations omitted]."

In the same case, the Oklahoma Supreme Court cited Parton v. Iven, 354 P2d 210 (Okl.1960), decided prior to the entrance of §154.5, reaffirming that "by issuing an alias summons plaintiffs abandoned original summons and waived the right to question court's ruling as to validity of first service." Lake v. Lietch, supra, at 936.

Taking all these authorities as a whole, the Court is forced to conclude that, by issuing alias summons prior to action by the Court on Seaboard's Motion to Quash, plaintiff abandoned its first

summons.[1] The alias summons was issued after expiration of the sixty (60) day "grace" period provided in 12 O.S. §97. Under these circumstances, suit was not timely commenced, and Seaboard's Motion to Dismiss must be sustained.

IT IS THEREFORE ORDERED that the Court's Order of May 11, 1980 (filed of record May 12, 1980), is hereby withdrawn.

IT IS FURTHER ORDERED that defendant Seaboard Coast Line Railroad's Motion to Dismiss is hereby sustained.

DATED this 2nd day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

1/ It is clear from Lake v. Lietch, supra, and Overhuls v. Alexander, 530 P2d 573, that if plaintiff had simply waited for the Court to rule on the Motion to Quash, he would have had 60 days from the date of the order quashing service to issue new summons and perfect service. In order to receive the benefit of 12 O.S. §154.5, plaintiff must wait for a Court Order, even if he becomes convinced the Motion to Quash has merit. This seems overly harsh, especially considering the remedial purpose of §154.5. However this Court is bound to follow State law as interpreted by the State Supreme Court, even if this Court disagrees with that interpretation.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GAS COMPRESSOR SERVICES, INC., an Oklahoma corporation,

Plaintiff,

vs.

E. W. ROBERTS and MONITA I. ROBERTS, d/b/a R & R Oil Company,

Defendants.

No. 79-C-661-BT

JOURNAL ENTRY

On this 2ND day of ~~September~~ OCTOBER, 1980, the Court having reviewed the stipulation submitted by the parties and attached to this Order, finds that Plaintiff, Gas Compressor Services, Inc., should receive judgment against Defendant, R & R Oil Company, in the amount of $5,000.00 for its costs and attorney's fees in prosecuting the captioned case.

IT IS THEREFORE ORDERED AND DECREED that Plaintiff, Gas Compressor Services, Inc., is granted a judgment against Defendant, R & R Oil Company, a partnership whose partners are E. W. Roberts and Monita I. Roberts, in the amount of $5,000.00 for its costs and attorney's fees in prosecuting the captioned case.

IT IS FURTHER ORDERED AND DECREED that said sum shall be in addition to Plaintiff's principal judgment in the amount of $25,000.00 granted on August 25, 1980, and that the full amount of the judgment in this case ($30,000) will bear interest at the rate of 12% per annum from August 25, 1980, until paid.

S/ THOMAS R. BRETT
THOMAS R. BRETT, U.S. District Judge

APPROVED AS TO FORM & CONTENT:

ROSENSTEIN, FIST & RINGOLD

BY: _____
John E. Howland

Attorneys for Gas Compressor Services, Inc.

Robert L. Eastman of BECKER, HILDRETH, EASTMAN & GOSSERD

and

Gary House of ROBBINS & HOUSE

BY: _____
Gary House

Attorneys for R & R Oil Company

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MINGO PLAZA APARTMENTS II, an Oklahoma Limited Partnership, a/k/a MINGO PLAZA APARTMENTS PHASE II, a/k/a LaFAYETTE APARTMENTS PHASE II,	)	79-C-6-BT ✓
Plaintiff,	)	
vs.	)	
FEDERAL INSURANCE COMPANY, a New Jersey Corporation,	)	
Defendant.	)	

JUDGMENT

Based on the Order filed this date, IT IS ORDERED JUDGMENT be entered in favor of the defendant, Federal Insurance Company, and against the plaintiff, Mingo Plaza Apartments II, a/k/a Mingo Plaza Apartments Phase II, a/k/a LaFayette Apartments Phase II, with each party to bear its own costs.

ENTERED this 2nd day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

OCT 2 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FIRST NATIONAL BANK OF CLAREMORE,	)	
PLAINTIFF,	)	
VS.	)	NO: 77-C-199-D
ROY T. RIMMER, JR.,	)	
DEFENDANT.	)	

JOURNAL ENTRY OF JUDGMENT

THIS ACTION was commenced on the 18th day of April, 1977, in the District Court of Rogers County, Oklahoma, and removed to this court on the 16th day of May, 1977. The matter is at issue and comes on for hearing this 2 day of October, 1980, for the entry of an agreed judgment.

THE PLAINTIFF, First National Bank in Claremore, a national banking corporation, has, since the filing of this action, converted to an Oklahoma banking corporation and is now known as the First Bank in Claremore. The Plaintiff appeared by John R. Carle, of CARLE, TANNER, LOLLMAN & HIGGINS. The Defendant, Roy T. Rimmer, Jr., appeared by G. Michael Lewis of DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON.

THEREUPON, the parties presented to the Court the terms of a settlement agreement and the Court finds that the terms of said agreement should be and are approved by the Court and that a judgment should be entered for the Plaintiff and against the Defendant pursuant thereto.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff, First Bank in Claremore, an Oklahoma banking corporation, formerly First National Bank in Claremore, have and recover from Roy T. Rimmer, the defendant, the sum of $70,000.00, together with interest at the rate of 7 1/2% per annum from September 10, 1976, until the date of this judgment, and hereafter at the rate of 10% per annum until paid, and attorney's fees of $10,500.00 and the costs of this action.

DATED THIS 2 DAY OF October, 1980.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE

24.

APPROVED AS TO FORM:

FIRST NATIONAL BANK OF CLAREMORE,
now known as FIRST BANK IN CLAREMORE,
Plaintiff

BY: John R. Carle-ks

JOHN R. CARLE
Carle, Tanner, Lollman & Higgins
417 West First
Claremore, Oklahoma 74017
341-2131

ROBISON, BOESE & DAVIDSON
P. O. Box 1046
Tulsa, Oklahoma 74101

ROY T. RIMMER, JR., Defendant

BY: G. Michael Lewis

G. MICHAEL LEWIS
Doerner, Stuart, Saunders,
Daniel & Langenkamp
1200 Atlas Life Building
Tulsa, Oklahoma 74103
Attorneys for the Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 2 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	
WILLIAM B. JONES, Defendant.	)	CIVIL ACTION NO. 80-C-489-E

DEFAULT JUDGMENT

This matter comes on for consideration this 2nd day of October, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, William B. Jones, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, William B. Jones, was personally served with Summons and Complaint on September 5, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, William B. Jones, for the principal sum of $980.54, plus the accrued interest of $433.06 as of July 10, 1980, plus interest at 7% from July 10, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of $980.54 from the date of Judgment until paid.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 2 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MINGO PLAZA APARTMENTS II, an Oklahoma Limited Partnership, a/k/a MINGO PLAZA APARTMENTS PHASE II, a/k/a LaFAYETTE APARTMENTS PHASE II,

Plaintiff,

vs

FEDERAL INSURANCE COMPANY, a New Jersey Corporation,

Defendant.

No. 79-C-6-BT

ORDER

Now on this 1st day of October, 1980, this cause came on for hearing on the Motion For Summary Judgment filed on behalf of the defendant, Federal Insurance Company in accordance with Rule 56(b) of the Federal Rules of Civil Procedure. The parties appeared by their respective attorneys.

The Court has for its consideration the Motion For Summary Judgment and Brief, as supplemented, by the defendant, and the Response and Brief filed by the plaintiff; the pleadings; the deposition testimony and exhibits taken of the producing agents; copies of the policy contract sued on with exhibits; and the Stipulation filed herein August 11, 1980. The Court has been further advised by the attorneys for both parties that there are no other facts which can be produced having a bearing on issue raised in the Motion For Summary Judgment.

After argument of counsel and consideration of the pleadings, briefs, depositions, exhibits and stipulation, the Court finds:

That the defendant's Motion For Summary Judgment should be sustained for the reasons stated herein:

This is an action by an Oklahoma Limited Partnership against a foreign insurance company on a contract of insurance issued to the plaintiff by the defendant. The Complaint seeks recovery of damages sustained by reason of one of the perils insured against.

Jurisdiction is based on diversity of citizenship.

The pleadings, depositions, exhibits and stipulation before the Court show that the plaintiff filed suit January 3, 1979 for acts of vandalism occurring July 15, 1977 and September 13, 1977. The plaintiff was aware of the occurrences when they happened and promptly reported the claim. The policy contract sued on contains a provision providing that suit must be commenced within 12 months after discovery by the insured of the occurrence which gives rise to the claim.

The Court further finds that the one year limitation for bringing an action on the policy is permitted in Oklahoma by the provisions of Title 36 O.S. § 3617.

This action was not commenced within 12 months after discovery by the plaintiff of the occurrences giving rise to the claims upon which suit was filed. There is no material issue as to this material fact and the defendant is entitled to judgment on its Motion For Summary Judgment as a matter of law.

IT IS, THEREFORE, ORDERED that the Motion For Summary Judgment of the defendant Federal Insurance Company is sustained and the Complaint is in all respects dismissed.

IT IS FURTHER ORDERED that each party bear its own costs herein incurred.

Entered this 2nd day of October, 1980.

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED: as to form

/s/ Sam G. Bratton
Sam G. Bratton II
Attorney for Plaintiff

/s/ Donald Church
Donald Church
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

RUBY JEWELL SMITH, Plaintiff,	)	
-v-	)	No. 79-C-585-Bt
ALLSTATE INSURANCE COMPANY, Defendant.	)	

APPLICATION FOR ORDER OF DISMISSAL WITH PREJUDICE AND ORDER

Plaintiff and her counsel of record respectfully request the Court to enter an order dismissing her action with prejudice to the bringing of any further or additional actions by her against Defendant based upon a compromise settlement of all claims included herein.

Respectfully Submitted,

Ruby Jewell Smith
RUBY JEWELL SMITH
Plaintiff

2 1980

Jack B Sellers
JACK B. SELLERS
P. O. Box 730
Sapulpa, Oklahoma 74066

Attorney for Plaintiff

ORDER

Upon the foregoing Application and for good cause shown, it is the order of the Court that Plaintiff's action should be and is hereby dismissed with prejudice to the bringing of any further or additional actions, each party to bear their respective costs.

Dated this 2nd day of ~~September~~ Oct., 1980.

Thomas R. Brett
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HOOVER UNIVERSAL, INC.,	)	
	)	79-C-676-BT
Plaintiff,	)	
	)	
vs.	)	
	)	
C. L. BROOKS and	)	
JOHN LONGACRE,	)	
	)	
Defendants.	)	

FILED
OCT 1 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

JUDGMENT is hereby entered as follows:

1. Pursuant to the verdict of the jury rendered on September 26, 1980, Judgment is entered in favor of the plaintiff, Hoover Universal, Inc., and against the defendant, John Longacre, in the amount of $20,004.10 plus interest at the rate of 12% per annum until paid.

2. Judgment in favor of the plaintiff, Hoover Universal, Inc., and against C. L. Brooks and the assets of the partnership, Direct Lumber Company, in the amount of $26,300.09, plus interest at the rate of 12% per annum until paid.

ENTERED this 1 day of October, 1980.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE